

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF EDWARD A. HARRIGAN, JR.

23 Volume 1, Pages 1 - 268

24

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1 (The following is the Deposition of EDWARD
2 A. HERRIGAN, JR., taken pursuant to Notice of Taking
3 Deposition, at the Howard Johnson Plaza Hotel, 5032
4 Market Street, Wilmington, North Carolina, on
5 September 25, 1997, commencing at approximately 8:32
6 o'clock a.m.)

7

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5

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1 P R O C E E D I N G S

2 (Witness sworn.)

3 EDWARD A. HERRIGAN, JR.

4 called as a witness, being first duly sworn,

5 was examined and testified as follows:

6 ADVERSE EXAMINATION

7 BY MR. O'FALLON:

8 Q. Could you please state your full name for the
9 record.

10 A. My name is Edward A. Herrigan, Jr.

11 Q. And what is your current address?

12 A. [DELETED].

13 Q. Mr. Herrigan, my name is Dan O'Fallon and I
14 represent the state of Minnesota and the Blue Cross
15 and Blue Shield in a case against numerous tobacco
16 manufacturers including R.J. Reynolds Tobacco and
17 Liggett. Are you aware of that?

18 A. Yes, I am.

19 Q. When did you first hear about the fact that we
20 wanted to take your deposition?

21 A. About a month ago when I received a subpoena.

22 Q. And when you received that subpoena, what did
23 you do?

24 A. I read it.

25 Q. Did you contact any of your previous employers?

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1 A. I contacted R.J. Reynolds.

2 Q. And what did they recommend?

3 A. They recommended that I have representation from
4 the law firm that represents Reynolds and I consider
5 having a personal attorney.

6 (Interruption by the reporter.)

7 BY MR. O'FALLON:

8 Q. Mr. Horrigan, did you take their advice and hire
9 a personal attorney?

10 A. Yes, I did.

11 Q. Who did you hire?

12 A. Bill Davis.

13 Q. Are you paying Mr. Davis for his time?

14 A. No, I'm not.

15 Q. Is R.J. Reynolds paying for Mr. Davis's time?

16 A. Yes.

17 Q. Are you represented by any other attorney here
18 today other than Mr. Davis?

19 A. The company is here representing by Jones Day.

20 Q. What did you do in preparation for this
21 deposition, sir?

22 A. I met with lawyers from Jones Day and Bill
23 Davis.

24 Q. Have you had the opportunity to review
25 documents?

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- 1 A. None.
- 2 Q. How many hours did you meet with the attorneys?
- 3 A. Several hours.
- 4 Q. Over the course of what time period?
- 5 A. About a day and a half.
- 6 Q. If I could briefly, I'd like to go over your
- 7 history in the tobacco industry. It's my
- 8 understanding that you started in the tobacco
- 9 industry in 1978; is that correct?
- 10 A. That's correct.
- 11 Q. What -- what exact date was it?
- 12 A. I think it was July 1 of 1978.
- 13 Q. And you started at that time with R.J. Reynolds
- 14 International; is that correct?
- 15 A. R.J. Reynolds Tobacco International.
- 16 Q. And that was a subsidiary of R.J. Reynolds
- 17 Tobacco?
- 18 A. I don't recall the corporate structure. It was
- 19 part of R.J. Reynolds Industries.
- 20 Q. When you joined R.J. Reynolds Tobacco
- 21 International, you had previously worked in the food
- 22 and spirits industry; is that correct?
- 23 A. I had worked in the food, the sporting goods
- 24 industry and the spirits industry.
- 25 Q. And how old were you when you joined RJR?

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- 1 A. Forty-eight.
- 2 Q. What was your first position at R.J. Reynolds
- 3 Tobacco International?
- 4 A. I was chairman and chief executive officer.
- 5 Q. How long did you remain in that position?
- 6 A. About a year and a half.
- 7 Q. What was your next position?
- 8 A. Chairman and CEO of R.J. Reynolds Tobacco, which
- 9 was the domestic operating arm.
- 10 Q. How long did you remain in that role?
- 11 A. Four years to begin with.
- 12 Q. So from about 1979, '80 to about 1984?
- 13 A. Well, '80 to '84.
- 14 Q. Where did you go when you left that position?
- 15 A. We are skipping over a lot but I was named
- 16 president and chief operating officer of what was
- 17 then R.J. Reynolds Industries.
- 18 Q. What are we skipping over? Because I want the
- 19 record to be complete.
- 20 A. Well I retained the title of chairman of
- 21 Reynolds Tobacco from 1980, I believe, until I
- 22 retired in February of '89, holding other titles and
- 23 other responsibilities over that time.
- 24 Q. Okay, so for the entire period from 1980 to 1989
- 25 you were chairman of R.J. Reynolds Tobacco?

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1 A. Yes.

2 Q. Why don't you give me the other titles that you
3 held during that time period in addition.

4 A. Let's see, 1980 to '84 I was, as I said,
5 chairman and CEO of R.J. Reynolds Tobacco but in '82
6 I was also named executive vice president of R.J.
7 Reynolds Industries. In 1984 I was -- assumed the
8 responsibilities of president and chief operating
9 officer of R.J. Reynolds Industries and in '85 I was
10 named vice chairman of RJR Nabisco following the
11 acquisition of Nabisco.

12 Q. And is that it?

13 A. That's about it.

14 Q. Okay. But during the entire time from 1980 to
15 1989 you were chairman of R.J. Reynolds Tobacco;
16 correct?

17 A. Yes.

18 Q. And thus you were responsible during that time
19 period for, ultimately, for the decisions made by
20 R.J. Reynolds Tobacco; correct?

21 A. Basically.

22 Q. Now you left R.J. Reynolds Tobacco and R.J.
23 Reynolds -- and RJR Nabisco in 1989 after a buyout;
24 correct?

25 A. That's correct.

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1 Q. In that leverage buyout, you were one of the
2 competing groups, you and some other management were
3 one of the competing groups to buy R.J. Reynolds;
4 correct?

5 A. That's right.

6 Q. Ultimately another firm prevailed in that;
7 correct?

8 A. Yes.

9 Q. As part of that buyout, you sold whatever stock
10 you had; correct?

11 A. The buyout called for the surrender of all stock
12 and I surrendered all my stock.

13 Q. What was the total value of the stock you
14 surrendered in 1989?

15 A. I don't recall exactly.

16 Q. Give me an approximation.

17 A. Twenty-five million dollars.

18 Q. During your last year, your last full year at
19 RJR, what was your annual salary?

20 A. My base salary was \$660,000 a year.

21 Q. And did you -- excuse me -- did you also receive
22 bonuses?

23 A. I believe we had two bonus structures in place
24 that added to that compensation.

25 Q. What were those bonus structures?

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1 A. What do you mean by "what were they"?

2 Q. What were they based on?

3 A. Performance.

4 Q. Sales?

5 A. It wasn't that simple.

6 Q. Profitability of the company in general?

7 A. Earnings, current fiscal year. Another leg of
8 the compensation I think was on a -- an earnings over
9 a cumulative period. I don't remember the specifics
10 but it was a typical compensation plan in place in
11 companies in those days.

12 Q. And that compensation was basically determined
13 by how the company performed; correct?

14 A. That's correct.

15 Q. And for R.J. Reynolds Tobacco, generally
16 speaking, profits increased as tobacco sales
17 increased; correct?

18 MS. McDOLE: Objection to form.

19 A. Restate that question, please.

20 Q. Sure. And the for R.J. Reynolds Tobacco,
21 generally speaking, profits increased as tobacco
22 sales increased; correct?

23 A. That wasn't always true.

24 Q. Was that a general truth?

25 MS. McDOLE: Objection to the form.

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1 A. I think our sales always had a profit objective,
2 obviously.

3 Q. One of your goals at R.J. Reynolds tobacco was
4 to sell as many cigarettes as possible; correct?

5 MS. McDOLE: Objection to the form.

6 A. My objective at Reynolds was to increase our
7 share of market and meet our annual objectives.

8 Q. And if you increased your share of market then
9 you necessarily sold more cigarettes; correct?

10 MS. McDOLE: Objection to form.

11 A. You didn't have to because if you had a
12 declining market you could conceivably sell fewer
13 cigarettes.

14 Q. In any event, ultimately what you wanted to do
15 was sell as many cigarettes as possible while also
16 maintaining a market position that would lend itself
17 to long-term growth; correct?

18 MS. McDOLE: Objection, argumentative.

19 A. Our objective was to improve our market position
20 and to continue to improve the profitability of the
21 company.

22 MR. O'FALLON: Move to strike as
23 nonresponsive.

24 Q. In any event, ultimately what you wanted to do
25 was sell as many cigarettes as possibility while also

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1 maintaining a market position that would lend itself
2 to long-term growth; correct?

3 MS. McDOLE: Objection. Asked and
4 answered. It was responsive.

5 A. There is an implicit objective in your question
6 which I object to in terms of my ability to answer
7 it.

8 Q. And what is that?

9 A. You're trying to imply that our -- we were
10 solely occupied with selling cigarettes, quote
11 selling cigarettes, end of quote, which I object to.

12 Q. So it's your testimony you were not occupied
13 generally with selling cigarettes?

14 MS. McDOLE: Objection, misstatement of the
15 answer.

16 MR. DAVIS: Objection.

17 A. If we were a tobacco company and we marketed a
18 legitimate product, then obviously our objective was
19 to sell those cigarettes in the correct environment
20 and increase our performance and improve our
21 performance.

22 Q. In short, you wanted to sell as many cigarettes
23 as possible?

24 MS. McDOLE: Objection.

25 A. That's what you're saying.

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1 MS. McDOLE: Asked and answered.

2 Q. And you disagree with my statement?

3 A. I don't agree with the context of the
4 statement.

5 Q. Once you left R.J. Reynolds Tobacco, what did
6 you do?

7 A. Got involved in private investments.

8 Q. When is the next time that you worked for
9 someone?

10 A. Spring of 1993 until the spring of 1994.

11 Q. And was that job with Liggett?

12 A. That's correct.

13 Q. And what was your position at Liggett?

14 A. I was chairman and CEO of Liggett Group.

15 Q. And Liggett is another cigarette manufacturer;
16 correct?

17 A. It's a cigarette manufacturer.

18 Q. Why did you leave Liggett?

19 A. I did not feel comfortable in that environment
20 and it was not what I had thought it would be when I
21 went there.

22 Q. What about the environment made you
23 uncomfortable?

24 A. I was trying to rebuild the company and I wasn't
25 certain that I was on the same wavelength with the

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1 people who owned the company in terms of our
2 objectives.

3 Q. What did you feel their goals were?

4 A. My goal was to stabilize the company and improve
5 it's profitability for the long term and I wasn't
6 always certain that that was the case with the owners
7 but I can't go beyond that.

8 Q. What do you think the owners wanted to do, sir?

9 A. I don't think it's appropriate for me to comment
10 on that. I left the company.

11 Q. I need your answer.

12 A. My opinion, opinion, was that they were
13 harvesting the company.

14 Q. And the people that you felt were harvesting the
15 company included Mr. LeBow?

16 A. He is the only person that I'm talking about.

17 Q. Did you quit or did Mr. LeBow ask you to leave?

18 A. He asked me to leave finally.

19 Q. Since that time, have you worked for anybody
20 else?

21 A. No.

22 Q. Are you in retirement as we speak?

23 A. I'm in retirement other than private
24 investments, yes.

25 Q. Private investments, that's -- you basically do

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- 1 your own investing?
- 2 A. Start-up companies, other businesses.
- 3 Q. Do you sit on the board of directors of any
- 4 companies?
- 5 A. Yes, I do.
- 6 Q. What companies?
- 7 A. U.S. Airways, publicly held company; CUI, a
- 8 privately held company, and Wearever Products, a
- 9 privately held company.
- 10 Q. CUI Cox Uphoff International?
- 11 A. Pardon me.
- 12 Q. Is CUI Cox Uphoff International?
- 13 A. No, it is not.
- 14 Q. What does CUI do?
- 15 A. It's in the sports-memorabilia and
- 16 sports-promotion business.
- 17 Q. Do you still receive any compensation or
- 18 retirement benefits or insurance or any other kind of
- 19 benefits from either R.J. Reynolds or Liggett?
- 20 A. Nothing from Liggett and I receive a modest
- 21 pension from the tobacco company, medical and dental
- 22 insurance or care and a life insurance policy.
- 23 Q. What is your pension from R.J. Reynolds?
- 24 A. It's very modest because it was a subsidiary
- 25 pension. It was not the pension that was part of my

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1 agreement when I joined the company.

2 Q. How much is that?

3 A. Sixty-five thousand dollars a year.

4 Q. Prior to being subpoenaed for this deposition,

5 when is the last time you had contact with R.J.

6 Reynolds Tobacco Company or any of its members or

7 attorneys?

8 MR. DAVIS: Objection.

9 Go ahead.

10 A. I don't recall. I've had conversations over the

11 past with people that I was affiliated with but

12 that's all I can remember.

13 Q. You have had your deposition taken several

14 times; correct?

15 A. Yes.

16 Q. When is the last time you had your deposition

17 taken?

18 A. I believe it was the spring of '94.

19 Q. Was that in the Broin case?

20 A. What is the "Broin case"?

21 Q. The case down in Florida.

22 A. Which case in Florida?

23 Q. I believe it's the class action of airline

24 stewardesses.

25 A. That is the case then, yes.

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1 Q. Have you been asked to testify down in that
2 case?

3 A. No.

4 Q. And so far you haven't testified down there;
5 correct?

6 A. No.

7 Q. While you were a CEO of R.J. Reynolds, did you
8 also hold positions with a group called The Tobacco
9 Institute?

10 A. Yes, I did.

11 Q. And what were the positions you held?

12 A. I was on the board of directors of the Tobacco
13 Institute -- I believe that was the name of our group
14 that made up the management group of the Tobacco
15 Institute -- and I served as a chairman of the
16 Tobacco Institute as -- on a rotating chairmanship
17 basis.

18 Q. And The Tobacco Institute is an institute made
19 up of the tobacco manufacturers; correct?

20 A. Essentially.

21 Q. Basically it's their lobbying and public
22 relations arm; correct?

23 A. That's correct.

24 Q. Sir, you have served several times as a
25 spokesman both for your company and for the Tobacco

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1 Institute; correct?

2 A. I've served several times as spokesman for
3 Reynolds Tobacco but I never served as a spokesman
4 for the Tobacco Institute.

5 Q. Would you agree before you make public
6 statements concerning critical issues regarding
7 health and your products that you should be well
8 informed about those issues?

9 MR. DAVIS: Objection.

10 MS. McDOLE: Objection to the form.

11 A. If in carrying out my responsibilities to make
12 statements on any subject in connection with my
13 responsibilities, I feel I should be informed.

14 Q. And certainly when you came to R.J. Reynolds and
15 then became the chairman of R.J. Reynolds Tobacco,
16 you made every effort to inform yourself concerning
17 the issues you spoke about, such as health, addiction
18 and nicotine manipulation; correct?

19 MR. DAVIS: Objection.

20 A. Are you saying that to me? You are saying
21 certainly I did that. You don't know what I did
22 before or after I joined Reynolds.

23 Q. Did you do that, sir?

24 MS. McDOLE: Objection to the form.

25 MR. DAVIS: Objection.

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1 A. In answer to your question, without regard to
2 the specifics, I was aware of the allegations against
3 the industry, obviously, from my prior business life,
4 and I talked to various people that I knew before I
5 joined Reynolds.

6 Q. Did you carefully review the information inside
7 Reynolds' files?

8 MR. DAVIS: Objection.

9 A. I was interviewed in depth by the company; I did
10 not review files.

11 Q. You would agree that prior to making public
12 statements on behalf of your corporation, it's
13 important for you to make sure the statements you are
14 about to give are accurate; correct?

15 MR. DAVIS: Objection.

16 MS. McDOLE: Objection to the form.

17 A. I think I answered a question of that nature a
18 few minutes ago.

19 Q. You don't want to make misleading statements;
20 correct?

21 A. It's never my intention to make misleading
22 statements on any subject.

23 Q. You don't want to withhold important
24 information; correct?

25 A. As a responsible businessman, I don't recall

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1 that I've ever withheld any important information on
2 any subject.

3 Q. You understand that when you speak and make
4 public statements that people will be hearing those
5 statements; correct?

6 A. If I make public statements, I would assume that
7 people either read or hear those statements if they
8 are interested.

9 Q. And you understand that some of those people may
10 rely on your statements; correct?

11 MR. DAVIS: Objection.

12 MS. McDOLE: Objection to form.

13 A. You are making a very broad assumption here.
14 I'm not a Wizard of Oz here. I'm just a businessman
15 carrying out my responsibilities.

16 MR. O'FALLON: Move to strike as
17 nonresponsive.

18 THE WITNESS: Are you going be
19 nonresponsive?

20 Q. You understand that people may rely on your
21 statements when you make them; right?

22 A. I didn't say that. I said it's my
23 responsibility, if it's in a forum where we need to
24 make a response, to make that response. How people
25 judge that response or draw conclusions from it is an

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1 individual choice.

2 Q. Do you believe that the statements that you make
3 are reasonable?

4 MS. McDOLE: Objection to the overbreadth
5 of the question.

6 MR. DAVIS: Objection.

7 A. What statements are you talking about?

8 Q. Statements you make, for instance, about whether
9 or not cigarettes cause disease. Do you believe
10 those statements are reasonable?

11 A. Any statements I had made on this issue are
12 based upon my own personal opinions and my own
13 viewpoints on this issue.

14 Q. And do you believe that people should be
15 entitled to rely upon the statements you make
16 concerning the health effects of products being sold
17 by the company that you directed?

18 MR. DAVIS: Objection.

19 MS. McDOLE: Objection to the form.

20 A. That's -- You are continuing to bore in on
21 something which I've tried to answer properly, and
22 that is: I make my statements in the most informed
23 way possible; people draw their own conclusions.

24 Q. You believe your statements are reasonable;
25 correct?

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1 A. I believe that my statements are accurate and
2 honest.

3 Q. So -- Excuse me. So it would be reasonable for
4 someone upon hearing your statements to rely on them;
5 correct?

6 MR. DAVIS: Objection.

7 MS. McDOLE: Objection to the form.

8 A. That's a conclusion you're drawing; it is not a
9 conclusion I'm drawing.

10 Q. I think you have referred before to the fact
11 that your product's a legal product; correct?

12 A. Our product is a legal product in a legal
13 environment.

14 Q. You understand that even though you sell a legal
15 product you cannot sell that product through illegal
16 methods; correct?

17 A. We market our products legally through
18 authorized channels of distribution.

19 Q. For instance, you understand that you can't sell
20 your products by making misleading statements;
21 correct?

22 A. We market our product and conforming with all
23 the laws that apply to the marketing and distribution
24 of our product.

25 MR. O'FALLON: Move to strike as

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1 nonresponsive.

2 MS. McDOLE: Objection to the motion.

3 Q. Sir, do you believe that you can sell your
4 products by making misleading statements about them?

5 MS. McDOLE: Objection, asked and answered.

6 A. You continue to say I make misleading
7 statements, which is a charge which I refuse to
8 accept.

9 Q. Would you listen to my question carefully?

10 A. You said it several times, say it again.

11 Q. Do you believe that you can sell your products
12 by making misleading statements?

13 MS. McDOLE: Objection, harassment.

14 MR. DAVIS: Objection.

15 A. We market our product and conform with all the
16 laws regarding that product with regard to
17 distribution, warning labels, advertising. None of
18 that I consider misleading.

19 Q. My question isn't whether you consider it
20 misleading. My question is whether you agree with me
21 that it would be inappropriate for your company to
22 sell your product by making misleading statements
23 about your product.

24 A. I consider your question --

25 MR. DAVIS: Objection.

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1 A. -- academic because we do not mislead the
2 public.

3 MR. O'FALLON: Let's go off the record.

4 (Discussion off the record.)

5 BY MR. O'FALLON:

6 Q. Sir, you have made numerous public statements
7 concerning the issue of whether smoking causes
8 disease; correct?

9 MS. McDOLE: Objection to the form.

10 A. I have appeared before Congress and answered
11 their questions regarding our product.

12 Q. You have also testified in depositions in which
13 individuals claim that their lung cancer was caused
14 by cigarettes; correct?

15 A. I have appeared in depositions, in lawsuits
16 against the industry.

17 Q. You have also had ads taken out by R.J. Reynolds
18 in which you appeared in those ads; correct?

19 A. I don't recall that they were ads.

20 Q. How do you characterize them, sir?

21 A. They were mailings to consumers of our product.
22 I guess you would call them a "promotional device,"
23 or whatever you want to call it.

24 Q. They were solely mailings?

25 A. I don't recall my picture being in any ads.

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1 Q. You also appeared on the TV program "Nightline"
2 discussing the issue of whether smoking causes
3 cancer; correct?

4 A. You are saying that. I'll answer your question
5 saying I appeared on "Nightline" in connection with a
6 public-issues campaign that our company released.

7 Q. I'd like to review briefly some of the
8 statements that have been made by you or at least on
9 your behalf.

10 MR. O'FALLON: The first document I'd like
11 to have marked is a document Bates number TIMN 120739
12 through 741.

13 MR. DAVIS: Objection.

14 (Plaintiffs' Deposition Exhibit 4107 was
15 marked for identification.)

16 BY MR. O'FALLON:

17 Q. Sir, the reporter has handed you an exhibit that
18 has been marked Plaintiffs' Exhibit 4107. This is
19 dated March 12 of 1982. Are you familiar with this?

20 A. No. I'm just looking at it now.

21 Q. This is a document from the Tobacco Institute;
22 correct?

23 A. The heading would suggest that it is.

24 Q. And it states that it's for use at ten a.m.
25 Friday, March 12 1982; correct?

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1 A. That's as far as I read so far.

2 Q. Why don't we read the first paragraph. Says,

3 "WASHINGTON, D.C. -- a bill to substitute the health

4 warning on cigarette packages with a rotational

5 system involving seven different warnings is

6 unnecessary and ill-conceived, a tobacco industry

7 spokesman told a subcommittee today"; correct?

8 A. That is what I told the committee and that is a

9 correct report on what I said.

10 Q. It then goes on to say that, "Edward A.

11 Horrigan, Jr., chairman and chief executive officer

12 of R.J. Reynolds Tobacco Co. noted that proponents

13 have stated that the purpose of the bill is to inform

14 the public of the dangers of smoking"; correct?

15 A. This is in a release; I assume it's correct.

16 Q. Did you approve this release before it was

17 released by The Tobacco Institute?

18 A. I don't recall.

19 Q. Let's look on the next page, specifically the

20 third paragraph of the second page, Bates number

21 0120740. Are you with me?

22 A. I believe I am.

23 Q. It states, quote, "'Research sponsored by the

24 government, the tobacco industry and other private

25 organizations has failed to establish a causal link

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1 between smoking and disease,' Horrigan said";
2 correct? Do you recall making that statement to the
3 Congress?

4 A. Yes, I do recall saying that.

5 Q. It goes on to say, "That is scientific fact" --
6 "That is scientific fact readily available to anyone
7 willing to make an objective, unemotional study of
8 the existing evidence"; correct?

9 A. That's correct.

10 Q. To the best of your knowledge, would this press
11 release have been released to the general media for
12 republication in papers if they so chose?

13 MS. McDOLE: Objection to the form.

14 A. I believe this release reflects the position we
15 took before Congress and if called upon, this was a
16 release we were willing to give the press at large.
17 I don't know the channels or the methodology.

18 Q. So you weren't certain how exactly The Tobacco
19 Institute issued this release?

20 A. That's a rather naive question. You're --
21 you're obviously questioned by the press, whether
22 it's TV, radio or the publishing press, and you
23 respond to it in the typical channels of
24 communication.

25 Q. Sir, this doesn't seem to be a response. This

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1 seems to be an affirmative press statement by The
2 Tobacco Institute and what I'm asking you is whether
3 or not The Tobacco Institute typically did put out
4 press releases to the media.

5 MS. McDOLE: Objection to form.

6 A. You're saying -- you're saying this is an
7 affirmative statement; I am saying this merely
8 encapsulates what I said before Congress in 1982.

9 Q. I'm not arguing that. What I'm asking you, sir,
10 is whether or not it was the general practice of the
11 Tobacco Institute to issue statements like this and
12 then give them to the media.

13 MS. McDOLE: Objection to form.

14 MR. DAVIS: Objection.

15 A. The responsibility of the Tobacco Institute was
16 to carry on public relations and lobbying activity.

17 Q. I'm really asking a specific question about
18 whether you know whether when a press release like
19 this is done up, whether in fact it was the practice
20 of the Tobacco Institute to then go ahead and
21 distribute that out to the media.

22 MS. McDOLE: Objection to the form.

23 A. I can only tell you that if they were queried
24 that they had responses that they released to the
25 press. I don't see how I'm not answering --

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1 answering your question.

2 MR. O'FALLON: I'm going to have marked as
3 the next document a document Bates numbered 506623086
4 through 3099.

5 (Plaintiffs' Deposition Exhibit 4108 was
6 marked for identification.)

7 BY MR. O'FALLON:

8 Q. I've marked as Exhibit 4108 a document entitled
9 "Statement of Edward A. Horrigan, Jr. on S. 1929
10 before the Senate Committee on Labor and Human
11 Resources (March 16, 1982)." Do you recognize this
12 document?

13 A. Not really. That was 1982.

14 Q. Does this appear to be the statement you
15 submitted to the Congress at that time?

16 A. I'd have to look at it to be sure that it is.

17 Q. Well at the very first sentence, states that "My
18 name is Edward A. Horrigan, Jr."; correct?

19 A. That's correct.

20 Q. You also state that you are the chairman and
21 chief executive officer of R.J. Reynolds Tobacco
22 Company; correct?

23 A. That's correct.

24 Q. You also state that you are the "Chairman of the
25 Executive Committee of the Tobacco Institute, an

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1 association of tobacco manufacturers with
2 headquarters in Washington, D.C."; correct?

3 A. That's correct.

4 Q. You then state that "We are here to express our
5 industry's position on S. 1929, a Comprehensive
6 Smoking Prevention Education Act"; correct?

7 A. Correct.

8 Q. You then state that, "We are firmly opposed to
9 this legislation because we feel it is bad
10 legislation for the American public and our
11 industry"; correct?

12 A. Are we going to walk through every sentence this
13 way or --

14 Q. Sir, would you please answer my question?

15 A. So far that's correct.

16 Q. I'd like you to turn to page 5 of this
17 document. I'd like you to look at the third full
18 paragraph.

19 A. I will.

20 Q. Which starts "After three decades."

21 A. Which paragraph?

22 Q. The third full paragraph. It starts with "After
23 three decades."

24 A. Yes.

25 Q. Are you with me?

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1 Part of the reason you were opposing this new
2 rotating warning system was because you didn't feel
3 that there had been any proof that cigarettes caused
4 disease; correct?

5 A. That's your assumption, that was not the driving
6 force.

7 Q. I'm asking you the question, sir.

8 A. And I'm saying that's not a correct question
9 because that was not -- that was part of it.

10 Q. Well let's see what you told the Congress. You
11 stated that "After three decades of investigation and
12 millions of dollars invested by the government, the
13 tobacco industry and other private organizations, the
14 smoking and health controversy remains unresolved";
15 correct?

16 A. That's correct.

17 Q. You state, "The net result of all of this effort
18 has been that no causal link between smoking and
19 disease has been established"; correct?

20 A. Correct.

21 Q. You state, "This is not merely the opinion of
22 tobacco industry executives"; correct?

23 A. That's correct.

24 Q. Once again, you state, quote, this "is
25 scientific fact readily available to anyone willing

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1 to make an objective, unemotional study of the
2 existing evidence"; correct?

3 A. That's correct.

4 Q. I'd like to hand you a document that's been
5 previously marked as Plaintiffs' Exhibit 420.
6 Plaintiffs' Exhibit 420 is a document Bates numbered
7 50237 1212 through 1223. Have you seen this document
8 previously, sir?

9 A. No.

10 Q. This document is entitled "ABC NETWORK
11 'NIGHTLINE' INTERVIEW - FEBRUARY 2 of 1984." Do you
12 recall giving a "Nightline" interview on that date?

13 A. I don't recall the date but I recall being on
14 "Nightline".

15 Q. You recall being interviewed by Ted Koppel;
16 correct?

17 A. I recall being interviewed by Ted Koppel.

18 Q. Specifically you were interviewed about a number
19 of ads that were taken out in major newspapers and
20 magazines calling for an open debate about smoking;
21 correct?

22 A. Yes.

23 Q. So again advertisements were taken out in a
24 number of major newspapers and magazines concerning
25 this issue of whether cigarette smoking causes health

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1 by your company; correct?

2 MS. McDOLE: Objection to the
3 characterization.

4 MR. DAVIS: Objection.

5 A. You say they were advertisements; they were not
6 advertisements.

7 Q. What word do you want to use, sir?

8 A. These were public-issue statements.

9 Q. You paid for them; right?

10 A. We paid for them.

11 Q. Magazines and newspapers didn't voluntarily come
12 up to you and ask you whether they could run this
13 piece of information in the papers, did they?

14 MS. McDOLE: Objection to the form of the
15 question?

16 A. We placed a public-issue statement in the
17 newspaper; it was not an advertisement.

18 Q. You paid to place that?

19 A. People pay to place statements, organizations
20 pay to place statements, United Jewish Appeal, the
21 Anti-Defamation League. The issues -- just name the
22 issues that threaten this world, they pay to have
23 their statements known to the public. It's in that
24 same context that we did this with our public-issues
25 campaign.

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1 Q. And of course this wasn't an issue that
2 threatened the world, this was an issue that
3 threatened your own tobacco sales; correct?

4 MS. McDOLE: Objection to form.

5 MR. DAVIS: Objection.

6 MS. McDOLE: Argumentative.

7 A. I'd rather leave that question unanswered. Your
8 assumption is incorrect. The -- There continued to
9 be a rising controversy about the product that we
10 manufactured and we felt that it was important that
11 we have our views on these issues made more public.

12 Q. And that's why you decided to place ads or
13 public statements, or whatever you want to call them,
14 to pay to place those in numerous magazines and
15 newspapers throughout the country; correct?

16 MS. McDOLE: Object to the form.

17 MR. DAVIS: Objection.

18 A. We did not place ads. These were public-issues
19 statement.

20 Q. And you paid to have those public-issue
21 statements placed in magazines and newspapers
22 throughout the country; correct?

23 MS. McDOLE: Objection, asked and answered
24 several times.

25 MR. DAVIS: Objection.

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1 A. To place a public-issue statement or anything in
2 a newspaper, an insertion requires a fee or a rate of
3 spending.

4 Q. Let's look at page 5 of this. The last four
5 Bates numbers are 1216.

6 A. Which page?

7 Q. Five, the last four Bates numbers are 1216. Are
8 you with me?

9 A. Yes.

10 Q. Let's go down towards the end of this, the last
11 five or six lines. Do you see where Ted Koppel says,
12 "Cigarette smoking does not cause cancer, yes or
13 no?"

14 A. I see it.

15 Q. Mr. Koppel asked you -- stated, quote,
16 "Cigarette smoking does not cause cancer, yes or
17 no"; correct?

18 A. That's what he asked me.

19 Q. Your answer was, quote, "It is not known whether
20 cigarettes cause cancer"; correct?

21 A. That was my statement.

22 Q. He then states, "All right, sir," and you state,
23 "It has not been causally established"; correct?

24 A. That's what I said.

25 Q. He then states, "Cigarette smoking - no causal

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1 relationship between cigarette smoking and
2 emphysema?" and you state, "Despite all of the
3 research to date, there has been no causal link
4 established"; correct?

5 A. That's correct.

6 Q. He then states, "No causal relationship between
7 cigarette smoking and heart disease?"; correct?

8 A. That was his question according to this text
9 here.

10 Q. And your answer was "no"; correct?

11 MS. McDOLLE: Incomplete. Objection to the
12 form.

13 A. My answer is in the document that you are
14 walking me through. It did not just say no. Go on
15 to read the rest of the answer.

16 Q. Says, "No. As a matter of fact, there are
17 studies that while we are accused of being associated
18 with heart disease, there have been studies conducted
19 over 10 years that would say, again, science is still
20 puzzled over these forces"; correct?

21 A. That was my answer.

22 MR. O'FALLON: I'd like to next have marked
23 a document Bates numbered 50326 0575 through 0578.

24 (Plaintiffs' Deposition Exhibit 4109 was
25 marked for identification.)

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1 BY MR. O'FALLON:

2 Q. 4109 is a document entitled on the first page

3 "An Open Debate." Do you recognize this document?

4 A. No, I don't.

5 Q. The second page of the document has your

6 picture, doesn't it, sir?

7 A. Has my picture.

8 Q. And these are apparently representative of your

9 views; correct?

10 A. This goes on to talk about public confusion,

11 scientific proof. I haven't read it and I don't know

12 where this originated or how it was used.

13 Q. Well isn't this exactly the, what you call,

14 public-issues campaign that Mr. Koppel was referring

15 to in his transcript?

16 MS. McDOLE: Objection to the form, to the

17 assumption.

18 A. You are showing me a document that I have never

19 seen before, I don't -- that I can recall. You are

20 referring to the public-issues campaign. I don't

21 recall that this was any part of the public-issues

22 campaign, but that's my memory.

23 Q. So it might have been, you just don't recall?

24 MS. McDOLE: Objection to the form.

25 A. It's possible that I don't recall, but I will

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1 say I don't think it was part of the public-issues
2 campaign in the context that I understood the
3 public-issues campaign.

4 Q. Was it in some other context?

5 A. You tell me where you found it because I don't
6 know where it came from.

7 Q. Well sir, I found out of R.J. Reynolds files as
8 they have been produced to me in this litigation, and
9 since you were the former chairman of R.J. Reynolds
10 Tobacco and since it's your picture on the front of
11 the second page of this document, I guess I assumed
12 you would have some idea how a this was done.

13 A. That's a very brash assumption. I was not in
14 charge of the file room and the correspondence that
15 continued in that company and my responsibilities
16 over those many years was voluminous. I have no idea
17 where this came from, how it was used or anything of
18 the kind.

19 Q. Typically when you have your picture used by the
20 company and there are statements printed that
21 apparently are attributed to you, you'd want to make
22 sure that those statements are accurate; correct?

23 MS. McDOLLE: Objection to the form.

24 A. Going back to your earlier questioning, I said I
25 had a responsibility that anything that appeared over

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1 my signature was responsible and I understood what it
2 was saying. I have to believe in that context,
3 however it was used, I understood what it was all
4 about and I therefore signed off on it. I'm telling
5 you I have no idea how or where or when this was
6 used.

7 Q. But you don't deny you did sign off on this
8 document?

9 MS. McDOLE: Objection to the form.

10 A. I'm saying I don't remember this document.

11 Q. But your name is on the second page of it after
12 the statement; right? Do you see where it says
13 "E. A. Horrigan, Jr., R.J. Reynolds Tobacco Company,
14 Chairman of Board"?

15 MS. McDOLE: Objection, objection.

16 A. My name is on a lot of documents, sir.

17 Q. And certainly when you put your name on
18 documents, you wanted to make sure you understood how
19 those documents were going to be used; correct?

20 MS. McDOLE: Objection, objection to the
21 suggest.

22 (Interruption by the reporter.)

23 MS. McDOLE: Objection to the -- let me
24 just finish the objection, or did you get it?

25 THE REPORTER: No. Please.

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1 Objection to the assumption that Mr. Horrigan
2 personally put his name on this document.

3 MR. O'FALLON: Ms. McDole, I've now been
4 with you in two depositions, I've allowed you to
5 object and make speaking objections up to this
6 point. I'd ask you to please restrict your
7 objections to a short, brief statement and the word
8 "objection." As you know, that's what the court
9 order requires and I think it would be nice if you
10 would show me the courtesy, the court the courtesy
11 and the jury the courtesy of following the rules that
12 are in place in this litigation.

13 MS. McDOLE: Excuse me, but this is
14 circular questioning. You have gone over this ground
15 with the witness. It's clear he doesn't remember
16 anything about this document, and I don't believe my
17 objections are inappropriate. And it breaks my heart
18 you have forgotten there were actually three
19 depositions, not just two, Dan.

20 MR. O'FALLON: In any event, this isn't the
21 time to make your arguments to the court. Your
22 objections, by stating the word "objection,"
23 preserves any argument you want to make, and I would
24 simply ask that you wait until we go to trial when
25 you or whoever is representing R.J. Reynolds in the

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1 trial can make whatever appeal to the judge they want
2 to make about any line of questioning.

3 MS. McDOLE: I think the record reflects
4 that we have gone over and over the same ground with
5 this witness, the witness has told you several times
6 he doesn't recall the document, he doesn't remember
7 anything about it, he doesn't remember authorizing
8 it, so you are just beating a dead horse, and I think
9 under those circumstances, my objections are not out
10 of line. They were not directed to the court; they
11 were trying to make you stop harassing the witness.

12 BY MR. O'FALLON:

13 Q. Mr. Horrigan, my question was: And certainly
14 when you put your name on documents, you want to make
15 sure you understand how those documents are going to
16 be used; correct?

17 MS. McDOLE: Objection, asked and answered.

18 A. Anything that I sign I read and understand.

19 Q. And one of the purposes of this document was to
20 again communicate to the public that in R.J.
21 Reynolds' opinion there was no scientific proof that
22 cigarettes cause any disease; correct?

23 A. You have --

24 MS. McDOLE: Objection to form.

25 A. -- assumptions once again. I don't know where

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1 you found this, how it was used and I do not agree
2 with the line of questioning.

3 Q. Well let's look at the third page of the
4 document.

5 A. No, let's not look at page 3. Let's have the --
6 understand where you found this, how it was used so
7 that I can understand more completely what we are
8 talking about here. Out of the reams of documents
9 that go on in my entire corporate career, I can't
10 remember three pages any better than you can after 15
11 years.

12 Q. Fine. Then let's look at what the document
13 itself says, because that's what my question is
14 about, what this document says. Let's look at page
15 0577, the third page of the document, sir. It
16 states, "NO SCIENTIFIC PROOF"; correct?

17 A. That's what this document says.

18 Q. The document states that "The case against
19 smoking has been primarily based on statistical
20 studies, not on scientifically established proof of
21 cause"; correct?

22 A. That's what this document says. I can read.

23 Q. You don't deny that one of the themes of the
24 public campaign that you undertook was that you were
25 encouraging the public to have an open debate on

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1 smoking; correct?

2 A. The objective of our campaign was to take the
3 various issues that confront the industry and present
4 our opinion of those issues.

5 Q. I'm going to have you look at a document that's
6 been previously marked Plaintiffs' Exhibit 1051.
7 It's Bates numbered 50463 8051. Do you recognize
8 this document, sir?

9 A. I recall.

10 Q. Is this a document that was part of the
11 public-issues campaign?

12 A. I believe it was.

13 Q. And the basic gist -- Strike that.

14 And is it your understanding that this was one
15 of the public-issue statements that was put in the
16 magazines and newspaper?

17 A. I said I think I recall that this was one of the
18 insertions as part of our campaign. I can't say for
19 certain.

20 Q. The first paragraph states that, quote, "It has
21 been stated so often that smoking causes cancer, it's
22 no wonder most people believe this is an established
23 fact"; correct?

24 A. Yes.

25 Q. "But, in fact, it is nothing of the kind";

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1 correct?

2 A. That was our position.

3 Q. This was your position to the public; correct?

4 A. That was and is.

5 Q. Now you understand that in order to have an open

6 debate it's important for the people who are going to

7 have the debate to have all the information;

8 correct?

9 MR. DAVIS: Objection.

10 A. Restate the question, please.

11 Q. You understand that in order to have an open

12 debate it's important for the people who are doing --

13 who are going to have that debate to have all the

14 available information; correct?

15 MR. DAVIS: Objection.

16 A. I don't believe that every debate, everyone has

17 all the available information.

18 Q. Wouldn't you --

19 A. We were taking these various positions and

20 stating as much as we knew about them in the form

21 that we were choosing.

22 Q. Wouldn't you agree that the public, in order to

23 intelligently debate the issue of whether smoking

24 causes cancer, is entitled to the research that you

25 had in house at R.J. Reynolds concerning that issue

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1 of whether smoking caused cancer or any other
2 disease?

3 MR. DAVIS: Objection.

4 MS. McDOLE: Objection to the form.

5 A. I think the public at large was aware of the
6 many, many articles published over many, many years
7 over the issues both pro and con.

8 Q. Shouldn't they also be entitled to the
9 information your scientists had and your scientists
10 believe about this very crucial issue?

11 MR. DAVIS: Objection.

12 A. I don't know what scientists you are talking
13 about or what information we had.

14 Q. Let's take a look through some of that
15 information. I'm going to hand you a document that's
16 been previously marked in this litigation as
17 Plaintiffs' Exhibit 1090.

18 A. Right after I was born.

19 Q. Plaintiffs' Exhibit 1090 is a document Bates
20 numbered 50193 2947 through 2968. Have you seen this
21 document previously?

22 A. Never.

23 Q. This is a document entitled "SURVEY OF CANCER
24 RESEARCH with emphasis upon POSSIBLE CARCINOGENS FROM
25 TOBACCO." Do you see that?

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- 1 A. Yes.
- 2 Q. It's written by Claude E. Teague, Jr., 2
3 February of 1953; correct?
- 4 A. According to this, yes.
- 5 Q. Mr. Teague was a scientist at your company;
6 correct?
- 7 A. I recall that, yes.
- 8 Q. He was there when you arrived; correct?
- 9 A. He was there when I was there.
- 10 Q. Let's look on the third page of this document,
11 which has a 2 at the bottom, last four Bates numbers
12 2949. Do you see the paragraph "OBJECT"?
- 13 A. Yes.
- 14 Q. He states that "The object of this report is to
15 give a broad, general survey of cancer research, with
16 emphasis on studies actually or potentially related
17 to carcinogens from tobacco"; correct?
- 18 A. I'm reading this so I -- correct or incorrect,
19 I'm reading what was in this document so I guess I'll
20 agree with you I'm reading the same words you are.
- 21 Q. That's apparently the object of this document as
22 stated by its author; correct, sir?
- 23 MS. McDOLLE: Objection.
- 24 MR. DAVIS: Objection.
- 25 A. I don't know that. The objection is written

- 1 here; you would conclude that.
- 2 Q. Let's look at the previous page, which contains
- 3 the table of contents. Do you see where it says
- 4 "TOBACCO AND CARCINOGENIC ACTIVITY? It's Roman
- 5 numeral IV.
- 6 A. Yes.
- 7 Q. Under that it lists statistical studies;
- 8 correct?
- 9 A. Yes.
- 10 Q. It lists animal studies with tobacco substances;
- 11 correct?
- 12 A. Yes.
- 13 Q. It lists carcinogens identified in tobacco
- 14 substances; correct?
- 15 A. Yes.
- 16 Q. It lists compounds isolated from tobacco
- 17 substances and the possibilities of carcinogens
- 18 arising from them; correct?
- 19 A. Yes.
- 20 Q. And it lists tobacco additives; correct?
- 21 A. Correct.
- 22 Q. And Roman numeral V states "CONCLUSIONS";
- 23 correct?
- 24 A. Correct.
- 25 Q. Let's go to page 14 and look at the conclusions

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1 Mr. Teague -- Dr. Teague drew.

2 Do you see the paragraph marked "CONCLUSIONS"?

3 A. Yes.

4 Q. He states, quote, "The increased incidence of
5 cancer of the lung in man which has occurred during
6 the last half century is probably due to new or
7 increased contact with carcinogenic stimuli";
8 correct?

9 A. That's what this statement reads, yes.

10 Q. The closely parallel increase in cigarette
11 smoking has led to the suspicion that tobacco smoking
12 is an important etiological factor in the induction
13 of primary cancer of the lung; correct?

14 MS. McDOLE: Etiologic.

15 MR. O'FALLON: Etiologic.

16 Q. Correct?

17 A. That's what it says here.

18 Q. Do you understand what the word "etiologic"
19 means?

20 A. No, I don't.

21 Q. You've never heard that term?

22 A. I do, I've heard it, I can't remember it.

23 Q. It usually means cause; correct?

24 MS. McDOLE: Objection to the form.

25 A. Are you telling me? Do you want to define for

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1 me, please? I asked you, you --

2 (Interruption by the reporter.)

3 A. You define it for me so I understand it.

4 Q. We'll let Dr. Teague define it. He has done so
5 in previous depositions.

6 It then says its "Studies of clinical data tend
7 to confirm the relationship between heavy and
8 prolonged tobacco smoking and incidence of cancer of
9 the lung"; correct?

10 A. That's what this says.

11 Q. Now, as part --

12 MS. McDOLLE: Objection.

13 Q. -- of your open debate, did R.J. Reynolds ever
14 tell the public as of 1953 its own scientists
15 concluded that studies of clinical data tended to
16 confirm the relationship between heavy and prolonged
17 tobacco smoking and incidence of cancer of the lung?

18 MS. McDOLLE: Objection.

19 A. You're asking a specific question about our
20 campaign and relating to one document written in 1953
21 and our campaign was based upon the sum total of all
22 that we are aware of in 1984 or whenever it was.

23 Q. Haven't you testified that not a great deal has
24 changed over the last 30 or 40 years on cancer?

25 A. That's correct.

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1 Q. Well so apparently this was valid 30 or 40 years
2 ago and nothing's changed, then it's valid today;
3 correct?

4 MR. DAVIS: Objection.

5 MS. McDOLE: Objection, argumentative.

6 A. Well I'm not -- I can't skip through a 14-page
7 document and answer your questions with such
8 certainty as you're trying to place here on the
9 table.

10 Q. But in any event, as far as you know, RJR never
11 shared Dr. Teague's opinions with the public as part
12 of its open debate on the subject of smoking and
13 cancer; correct?

14 MR. DAVIS: Objection.

15 MS. McDOLE: Objection to form. You only
16 read him some of the things you wanted him to see.

17 A. I don't know what they did with this document
18 and I have no idea. Certainly if you are implying
19 that people suppressed anything, I would take strong
20 objection to that as a responsible executive.

21 Q. Well did you ever make that statement while you
22 were an executive? Did you ever go before Congress
23 and say that, in 1953, one of our senior scientists
24 concluded that, quote, "Studies of clinical data tend
25 to confirm the relationship between heavy and

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1 prolonged tobacco smoking and incidence of cancer of
2 the lung"?

3 MS. McDOLE: Objection.

4 MR. DAVIS: Objection.

5 A. Be careful how you are selectively using your
6 words here. I see the words "probably" do. This is
7 not, from my very brief overview of this, a
8 conclusive, final statement.

9 Q. "Probable" means more likely than not, does it
10 is not, sir?

11 MR. DAVIS: Objection.

12 MS. McDOLE: Objection to form.

13 A. I'm telling you that this was one of many
14 scientists that developed many memorandums over many,
15 many years.

16 Q. Did R.J. Reynolds ever tell the public that it
17 was more likely than not that prolonged tobacco
18 smoking had a relationship to the incidence of cancer
19 of the lung?

20 MR. DAVIS: Objection.

21 A. Our position on smoking and health is that there
22 has been no causal link established between smoking
23 and the diseases that we are accused of causing.

24 Q. So your answer to the question is no, you have
25 never told the public that?

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1 MR. DAVIS: Objection.

2 MS. McDOLE: Objection to form.

3 A. My answer is exactly what I just gave you.

4 Q. I'd like to next show you a document previously
5 marked as Plaintiffs' 1049, it's Bates numbered
6 50094 5942 through 5945.

7 Have you seen this document previously, sir?

8 A. Never.

9 Q. Dr. Rodgman was one of the people who advised
10 you on the issues of smoking and health; correct?

11 MR. DAVIS: Objection.

12 A. That is not -- That's an assumption on your
13 part.

14 Q. Is that not true?

15 A. You're saying that Dr. Rodgman advised me on
16 smoking and health. Dr. Rodgman was a scientist with
17 our company and I don't recall exactly what role he
18 played in terms of the dialogue that I was involved
19 in at Reynolds.

20 Q. Do you recall generally what his duties were
21 when you were at R.J. Reynolds?

22 A. No, I do not.

23 Q. Dr. Rodgman wrote this particular document;
24 correct, sir?

25 A. I don't know that.

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- 1 Q. Why don't you look at the last page of the
2 document and see if you signed it.
- 3 A. His signature is on here.
- 4 Q. Yes. Let's go back to the front page. This is
5 called "THE OPTIMUM COMPOSITION OF TOBACCO AND ITS
6 SMOKE"; correct?
- 7 A. That's what this document says, yes.
- 8 Q. Roman numeral I is entitled "HISTORICAL";
9 correct?
- 10 A. Yes.
- 11 Q. It says, "In 1954 the first report of the
12 presence of a carcinogenic (cancer-producing)
13 polycyclic hydrocarbon, 3,4-benzpyrene in cigarette
14 smoke was published"; correct?
- 15 A. That's what this says.
- 16 Q. Says, "Since then, approximately 60 similar
17 compounds have been isolated from the smoke of
18 cigarettes"; correct?
- 19 A. That's what this document says.
- 20 Q. He says, "Eight of the polycyclic hydrocarbons
21 isolated from the smoke are known to produce cancer
22 in mice"; correct?
- 23 A. That's what this report says.
- 24 Q. Says, "Another five or six are suspect as cancer
25 producing agents in laboratory animals"; correct?

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1 A. That's what this statement says.

2 Q. He then goes on to say, quote, "There is no
3 evidence that any of these compounds will produce
4 cancer in man. Nonetheless, there is a distinct
5 possibility that the substances would have a
6 carcinogenic effect on the human respiratory system";
7 correct?

8 A. That's what he says.

9 Q. He says, "Medical experience has shown that man
10 responds to various chemical substances in the same
11 manner as experimental animals"; correct?

12 A. That's what it says.

13 Q. He states, quote, "It follows therefore that it
14 would be better for the consumer if cigarette smoke
15 were devoid of such compounds"; correct?

16 A. That's what he said.

17 Q. He then goes on to say that, "As described in
18 RDR, 1956, No. 9, we in the R.J. Reynolds Tobacco
19 Company Research Department corroborated the
20 published findings with respect to 3,4-benzpyrene,
21 obtained this compound in crystalline form and
22 positively identified it as a constituent of
23 cigarette smoke on the basis of it's chemical and
24 physical properties"; correct?

25 A. That's what this report says.

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1 Q. He says, "Some thirty-odd polycyclic
2 hydrocarbons have since been similarly characterized
3 in these laboratories"; correct?

4 A. That's what he says.

5 Q. "Of these, eight are carcinogenic to mouse
6 epidermis"; correct?

7 A. That's what he says.

8 Q. "Cholanthrene, a potent carcinogen, is one of
9 three not yet reported by other investigators";
10 correct?

11 A. I'm reading it along with you.

12 Q. You didn't share this information with the
13 public in the 1980s when you took out your
14 public-issues campaign, did you, sir?

15 MR. DAVIS: Objection.

16 MS. McDOLE: Objection to the form, to the
17 assumption it wasn't known at the time.

18 A. I never saw this document in 1959, I mean that
19 was published in 1959, and our public-issue
20 statements were based upon the sum total of the
21 information that we had available to us in 1982 or
22 '3.

23 Q. Let's go back to Plaintiffs' Exhibit 1051, which
24 is entitled "Smoking and lung cancer: A second
25 opinion." Would you look at that document, sir? I

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1 want you to look in the middle column, the very last
2 two paragraphs of that column. Do you see where I'm
3 at?

4 R.J. Reynolds stated, quote, "Other laboratory
5 experiments have attempted to isolate the components
6 of cigarette smoke.

7 "But in over a quarter of a century, no one has
8 ever been able to identify an ingredient or group of
9 ingredients as found in cigarette smoke which causes
10 cancer (or any other disease) in humans"; correct?

11 A. That's what this says.

12 Q. That's directly contrary to what Dr. Rodgman
13 stated in his 1959 memo based on research done in
14 R.J. Reynolds' laboratories; isn't that correct?

15 MR. DAVIS: Objection.

16 MS. McDOLE: Objection, mischaracterization
17 of the document.

18 A. I don't want to get into an argument between
19 documents but I read this, it says it does not cause
20 it in humans and I don't see anything in Rodgman that
21 said it caused it in humans.

22 Q. He says that it is likely it is going to because
23 it caused it in animals; isn't that true, sir?

24 MR. DAVIS: Objection.

25 MS. McDOLE: Objection to form.

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1 A. He said that it is likely; he did not say it is
2 absolutely established.

3 Q. And the fact of the matter is, you don't test
4 potential carcinogens on humans, sir, because that's
5 unethical; correct?

6 MS. McDOLE: Objection to the form.

7 A. You don't use human beings to conduct tests like
8 that that I'm aware of.

9 Q. Right. You use animals like Mr. Rodgman did.

10 A. Scientists -- scientists had their own
11 techniques; I don't know what they are. All I know
12 is, the scientists I was aware of over the many years
13 I was in the industry stated there had been no causal
14 link established and to dance through these documents
15 20 and 30 years back and try to build your case is
16 something I have a problem subscribing to.

17 Q. As far as you know, R.J. Reynolds has never said
18 the following statement: That "there is a distinct
19 possibility that these substances would have a
20 carcinogenic effect on the human respiratory system";
21 correct?

22 MR. DAVIS: Objection.

23 A. I don't know what you are reading from.

24 Q. I'm reading from Dr. Rodgman's report in 1959
25 that was sitting in R.J. Reynolds' files.

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1 MR. DAVIS: Objection.

2 A. Read it to me again.

3 Q. You have never, R.J. Reynolds never during your
4 tenure told the public that there is a distinct
5 possibility that the substances would have a
6 carcinogenic effect on the human respiratory system;
7 correct?

8 MS. McDOLE: Objection to the form of the
9 question.

10 A. In any organization, people at different levels
11 in different functions of responsibility can draw
12 conclusions and make recommendations and what
13 management decides to do with those recommendations
14 or what further action they take, that's up to
15 executive responsibility to deal with it.

16 Q. And so your answer to my question is no?

17 MS. McDOLE: Objection to form.

18 A. My answer to your question is exactly what I
19 said.

20 Q. Then I'll move to strike it as nonresponsive.

21 MS. McDOLE: Objection to the motion.

22 Q. Listen to my question carefully. Have you or
23 R.J. Reynolds in your tenure told the public that
24 there is a distinct possibility that the substances
25 in smoke would have a carcinogenic effect on the

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1 human respiratory system?

2 A. We have said that it -- it is not known whether
3 cigarettes cause or don't cause the diseases we are
4 accused of causing. That's what we have said.

5 Q. Actually what you have said is in over a quarter
6 century, no one has been able to identify an
7 ingredient or group of ingredients as found in
8 cigarette smoke which causes cancer or any other
9 disease in humans; correct?

10 MS. McDOLLE: Objection, incomplete.

11 A. This is the way we said it in 1983. That's all
12 I can say.

13 Q. I'm next going to show you a document that's
14 been previously marked as Plaintiffs' Exhibit 1050.
15 Plaintiffs' Exhibit 1050 is a document Bates numbered
16 50482 28 -- I believe it's 47 through 2852.

17 Have you seen this document previously?

18 A. Never. It's dated 1962; I joined the company in
19 1978.

20 Q. This document would have been available to you
21 in R.J. Reynolds' files; correct?

22 MR. DAVIS: Objection.

23 A. A lot of documents would have been available to
24 me, sir, on any subject.

25 Q. Well let's see what this document --

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1 A. Use some common sense, please, in your
2 questioning so I can answer them properly.

3 Q. Well let's see what this document would have
4 told you if you cared to read it.

5 MR. DAVIS: Objection.

6 A. You imply I didn't care to read it. I object to
7 that strenuously. This is dated 1962; I joined the
8 company 17 years later. If I became a history
9 student rather than an executive in charged with
10 growing the company, that would have been a total
11 mis-execution of my responsibilities.

12 Q. Did you tell your staff, before I go out and
13 tell the public smoking doesn't cause cancer I want
14 to see all the research on this subject?

15 MS. McDOLLE: Objection to form.

16 MR. DAVIS: Objection.

17 A. You are asking that question very literally. I
18 did not pose that question to my people. I dealt
19 with my scientists, my R&D people and public
20 relations people and my legal people with regard to
21 the extent of the knowledge that was available at
22 that time and I made the comments that I did based
23 upon that input, and I'll make them again here this
24 morning.

25 Q. Let's see what Dr. Rodgman had to say in 1962.

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- 1 Again the document I've handed you, Plaintiffs'
2 Exhibit 1050, indicates that Alan Rodgman is the
3 author; correct?
- 4 A. Yes.
- 5 Q. He was in the chemical division; correct?
- 6 A. You are telling me that; I don't know where he
7 was.
- 8 Q. Do you see where it says "Division: Chemical
9 Research"?
- 10 A. Yes.
- 11 Q. Okay. That would indicate he was in your
12 chemical research division, wouldn't it?
- 13 A. I don't know what that was then because there
14 was no such division when I was I was there that I
15 can recall.
- 16 Q. This document is entitled "THE SMOKING AND
17 HEALTH PROBLEM -- A CRITICAL AND OBJECTIVE
18 APPRAISAL"; correct?
- 19 A. Yes.
- 20 Q. Dr. Rodgman states that "The cigarette
21 smoke-health problem is discussed, and it is related
22 to the potential involvement of the members of the
23 Company's Research Department"; correct?
- 24 A. That's what he says.
- 25 Q. "Special emphasis is placed on the lung cancer

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1 problem," is what he states; correct?

2 A. That's what this memorandum reports, yes.

3 Q. He says, "Arguments by those claiming cigarette
4 smoke as a health hazard are presented, as well as
5 the counter-arguments of those not in accord with
6 such views"; correct?

7 A. That's what the document says.

8 Q. "The weight of the arguments and
9 counter-arguments is discussed"; correct?

10 A. That's what he says.

11 Q. "An attempt has been made to present the
12 arguments objectively"; correct?

13 A. I can read, too.

14 Q. So apparently in 1962 Dr. Rodgman is himself
15 basically having an open debate on this issue;
16 correct?

17 A. You can assume that. I don't know why he wrote
18 this.

19 Q. Okay. Then let's go to the memorandum. Do you
20 see where that is there? Dr. Rodgman writes --

21 A. Before we do, let's go back one paragraph.

22 Q. Sure.

23 A. "This memorandum presents my position as briefly
24 and as concisely as possible."

25 Q. And he is a chief scientist in your

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1 organization?

2 A. He is a scientist.

3 Q. At one time he was the director of research; did
4 you understand that?

5 A. I don't recall what his title is. I said
6 earlier I don't recall what his title is.

7 Q. Do you understand this is a gentleman that
8 worked at your company for some 40 years?

9 A. Of course. There were 16,000 employees there,
10 we had over 400 people in R&D, so I can't remember
11 everybody's title.

12 Q. And he was the one that was elevated to the top
13 of your scientists at one point in time?

14 A. I don't remember. I said to you I don't recall
15 what his responsibilities were.

16 Q. But you can't dispute that if I state that;
17 correct?

18 MS. McDOLLE: Objection to form.

19 A. I said I can't recall what his responsibilities
20 were. I don't know whether you know any more than I
21 do about it.

22 Q. Actually, I do. I've taken his deposition.

23 A. Well good.

24 Q. The memorandum states, quote, "Although the
25 major part of the sales of this Company consists of

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1 cigarettes, what the Company sells is cigarette
2 smoke"; correct?

3 A. This is what he says.

4 Q. He says, "This Company, therefore, should be
5 concerned with the physiological properties and
6 composition of cigarette smoke"; correct?

7 A. This is what he says.

8 Q. He says, "The benefits from such knowledge are
9 obvious, particularly," and there is a word missing,
10 and "it anticipates possible future governmental
11 regulation"; correct?

12 A. This is what he said.

13 Q. During the --

14 He then writes, "During the past two decades,
15 cigarette smoke has been the target of a host of
16 studies related to ill-health and particularly to
17 lung cancer"; correct?

18 A. That's what he states.

19 Q. He says, "The majority of those studies
20 incriminate cigarette smoke from a health viewpoint";
21 correct?

22 A. That's what he said.

23 Q. You then look on page 2, he has a Roman numeral
24 I, "The Evidence - Pro and Con"; correct?

25 A. Yes.

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- 1 Q. And under that you have a subparagraph a.
2 entitled "Epidemiological Data"; correct?
3 A. Yes.
4 Q. You have a subparagraph b. entitled
5 "Pathological Data"; correct?
6 A. We are going through this document very rapidly
7 but if I can read as fast as you can, that's the way
8 it's organized, yes.
9 Q. On page 3 there is a subparagraph entitled
10 "Biological Data," c.; correct?
11 A. I don't see it. Yes. There it is.
12 Q. Middle of the page?
13 A. Okay. Yes.
14 Q. On page 4, there is a subparagraph d. entitled
15 "Chemical Data"; correct?
16 A. I'm still reading page 3. What's your question
17 again?
18 Q. There is a subparagraph d. entitled "Chemical
19 Data" on page 4; correct?
20 A. Right.
21 Q. In that paragraph, he states that "Cigarette
22 smoke contains at least 17 compounds carcinogenic to
23 mouse skin"; correct?
24 A. That's what his report says.
25 Q. He also says, "Cigarette smoke also contains

1 promoting (or cocarcinogenic) agents"; correct?

2 A. Yes.

3 Q. Again you didn't share that with the public in
4 your public statements; correct?

5 MS. McDOLE: Objection to the form.

6 MR. DAVIS: Objection.

7 A. You are -- I take issue with the way you are
8 saying I did or didn't do something. With the reams
9 of documents in this company, to refer to a document
10 dated 1962 and refer that to something of the moment
11 that I was involved in is just not a fair line of
12 questioning. I object to it because my integrity is
13 at stake here and I resent this line of questioning
14 and you need to understand that.

15 Q. Again, sir, you are the person who stated that
16 the public needed to have an open debate and I'm just
17 showing some of the information from your files that
18 apparently wasn't shared with the public.

19 A. I'm the person who made those statements --

20 Q. We are having that debate, sir.

21 MR. DAVIS: Objection.

22 MS. McDOLE: Objection the form.

23 A. I made those statements in a responsible way.

24 Q. The jury will judge that. Let's look at e.,

25 "The Evidence to Date." Dr. Rodgman states --

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- 1 A. Where are you now, sir?
- 2 Q. E, "The Evidence to Date." I'm on page 4, under
- 3 e., "The Evidence to Date." Do you see where I'm at?
- 4 A. Yes.
- 5 Q. He states, quote, "Obviously, the amount of
- 6 evidence accumulated to indict cigarette smoke as a
- 7 health hazard is overwhelming"; correct?
- 8 A. That's what he says.
- 9 Q. "The evidence challenging this indictment is
- 10 scant"; correct?
- 11 A. That's what he says.
- 12 Q. You never shared those views with the public,
- 13 did you, sir?
- 14 MR. DAVIS: Objection.
- 15 MS. McDOLE: Objection to the form.
- 16 A. We didn't share these views but if you turn the
- 17 clock forward 16 years, the statistical information
- 18 continued to be overwhelming and we still had not
- 19 established a scientific link. In that context,
- 20 then, I think we continued to act responsibly.
- 21 Q. But he is not looking at just the statistical
- 22 evidence. He has looked at the epidemiological data,
- 23 the pathological data, the biological data and the
- 24 chemical data and concluded based on his analysis of
- 25 all four of those forms of data that, quote,

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1 "Obviously, the amount of evidence accumulated to
2 indict cigarette smoke as a health hazard is
3 overwhelming"; correct?

4 MR. DAVIS: Objection.

5 MS. McDOLLE: Objection.

6 A. Read the next sentence.

7 Q. "The evidence challenging this indictment is
8 scant"; correct?

9 A. He didn't say it's nonexistent, he said it's
10 scant. I'm not a scientist and I can't go through a
11 document and argue all of his reasoning that went
12 into this composition.

13 Q. Sir, you even stated in depositions that you
14 didn't believe a woman's health or offspring are
15 going to be affected one iota if she smoked up until
16 the date she gave birth to her child; correct?

17 A. I believe that.

18 Q. And you have also stated since you don't know
19 that people die slowly of tobacco you cannot say that
20 any people have died from tobacco; correct?

21 A. I have said that it is not known whether we do
22 or don't cause those diseases.

23 Q. You have also stated that one of the reasons
24 behind making statements denying the causal link is
25 that the smoking public is a beleaguered public and

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1 to the extent that they can be reinforced via
2 information that would help them as a -- as they
3 become more beleaguered, you would like to play that
4 role; correct?

5 MS. McDOLE: Objection.

6 A. What are you reading to me, sir? I don't
7 understand. Is this a question or is this a
8 statement?

9 Q. This is your statement.

10 MS. McDOLE: Then you should show it to
11 him. Objection.

12 A. Read it to me again.

13 Q. Do you recall stating, in essence, that the
14 smoking public is a beleaguered public and to the
15 extent they can be reinforced via information that
16 would help them as they become more beleaguered, you
17 would like to play that role?

18 MR. DAVIS: Objection.

19 MS. McDOLE: Objection to the form of the
20 question.

21 A. I believe there was an overwhelming level of
22 zealots that were out to prohibition us, if you will,
23 against smoking and cigarette smoking as a social
24 custom, and I felt that we had to reinforce people's
25 views and at least give them some other perspective.

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1 Q. What you were trying to do is give smokers some
2 comfort in their decision to continue smoking;
3 correct, sir?

4 A. We were trying to make the smoking public aware
5 of the issues as we understood them.

6 Q. Now you've also made the statement, haven't you,
7 that your company did not do any health and smoking
8 and health research?

9 A. I recall that specific --
10 Within our own company, I believe that's
11 correct.

12 Q. In fact, I believe you testified that R.J.
13 Reynolds does not do in-house biomedical research;
14 correct?

15 A. I believe I said that. I can't recall.

16 Q. Did you believe that was true historically, that
17 the company had never done in-house biomedical
18 research?

19 A. I'm not sure there wasn't research done over the
20 many years but, remember, the company was over a
21 hundred years old when I joined it.

22 Q. Well sir, in fact from sometime in 1965 until it
23 was abruptly halted in 1970, your company had a
24 biological research division, did it not?

25 MR. DAVIS: Objection.

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1 MS. McDOLE: Objection to the --

2 A. I don't know --

3 MS. DOLE: -- argumentative nature of the
4 question.

5 (Interruption by the reporter.)

6 A. I said I don't know if it did or didn't.

7 Q. Before you make public statements again stating
8 that your company hasn't done research, you should
9 certainly find out whether those are accurate?

10 MS. McDOLE: Objection to the form of the
11 question.

12 MR. DAVIS: Objection.

13 A. That's a very accusatory statement.

14 (Interruption by the reporter.)

15 MS. McDOLE: Objection to the form of the
16 question. Show him the public statement.

17 A. I said it was a very --

18 (Interruption by the reporter.)

19 A. You are leading me down a path here which I
20 resent, and that is, I said I was not aware of it and
21 that in my tenure there we did not do scientific or
22 medical research within the company.

23 Q. Do you recall having your deposition taken in
24 the Dewey case, sir?

25 A. What was the "Dewey case"?

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1 Q. Do you or don't you recall having your
2 deposition taken --

3 A. I've had many depositions taken, sir, in many
4 other industries, too, so please be specific and I'll
5 be glad to answer your question.

6 Q. It was in the Superior Court of New Jersey, sir,
7 Law Division, Clare E. Dewey, executrix of William E.
8 Dewey, Plaintiff, versus R.J. Reynolds Tobacco
9 Company, American Brands, Inc., formerly the American
10 Company, Brown & Williamson --

11 A. I remember it now.

12 Q. -- Company. Do you now understand it?

13 A. I remember it now.

14 Q. Based on this cover sheet, your deposition was
15 taken on August 30, 1983; correct?

16 A. I don't recall but if that's the statement, this
17 is a record of it, I guess it is.

18 Q. Specifically, you were asked:

19 You referred before to research that's been done
20 by the tobacco research council and it's predecessor
21 on the areas of tobacco and health. Has R.J.
22 Reynolds itself independently done any research in
23 that area to your knowledge prior to today?

24 Your answer: "There" is in what area?

25 Correct?

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1 MS. McDOLE: Do you have copies of this?

2 MR. O'FALLON: I do not.

3 MS. McDOLE: Can I see it when the witness
4 is finished, please?

5 MR. O'FALLON: You can see it when we are
6 done.

7 A. I see it underlined and marked. I don't know
8 what file, I don't recall the question or the answer.

9 Q. Do you see where it says Horrigan at the top,
10 Horrigan Direct?

11 A. I see that. I said I'm reading it and I don't
12 know the context it was asked.

13 MS. McDOLE: Can I please see it?

14 Q. Then on page 111, would you please start at the
15 top and read the questions and answers I've
16 highlighted?

17 A. Pardon me, excuse me. Is that page 10 and this
18 page 11?

19 Q. Yes, it is.

20 A. Then it's a continuation of it?

21 Q. It is, sir. Read them out loud for us, read
22 them out loud for the record, please.

23 A. Question: Tobacco and health?

24 Q. Answer?

25 A. Answer: We have a contributions committee made

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1 up of board members and, along with support to the
2 Council for Tobacco Research, we do give grants for
3 biomedical research.

4 Question: I take it, then, it is not done --

5 Answer: That is -- that's in a much broader
6 sense.

7 Question: That is not done by employees of
8 Reynolds?

9 My answer was: We do no research of that kind
10 in house.

11 Q. Now I'd like to show you page --

12 A. Pardon me. I will go beyond what my -- I'd like
13 my answer this way, but this is 1982, I say we do no
14 research. Whether we did or didn't in the past, I do
15 not know. So you're linking '62 to '59 to '82, and I
16 just want to make sure that's understood clearly.

17 Q. I'm also -- Well it's 1983.

18 I'm also going to show you page 234 of your
19 deposition in the Dewey case and ask you to read the
20 highlighted questions and answers, please, sir.
21 Please read them out loud.

22 A. I will.

23 Question: Just to make sure I understand your
24 previous testimony correctly, sir, am I correct in my
25 understanding that research and development at

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1 Reynolds, R.J. Reynolds, in house does not do any
2 direct research in tobacco and health?

3 And I said: That's correct.

4 And it says, and has never -- The question
5 again: Has never done so to your knowledge?

6 The answer: To the best of my knowledge.

7 Q. So apparently no one told you that in the 1960s,
8 ending in 1970, there was a mouse house doing
9 biological research on smoking and health at R.J.
10 Reynolds?

11 MS. McDOLE: Objection.

12 A. That's not an accurate question. No one
13 withheld anything from me and that testimony clearly
14 says that to the extent of my knowledge, I answered
15 those questions in that fashion.

16 Q. So once again, you're a person who is out in the
17 public making statements about whether or not smoking
18 is caused by cancer and you don't even know whether
19 your own company has done in-house biological
20 research in the past; correct?

21 MS. McDOLE: Objection to the argumentative
22 nature of the question.

23 MR. DAVIS: Objection.

24 A. I didn't say that. I said I was not aware of it
25 and I represent everything based upon the knowledge

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1 that we had during the entire time I was with that
2 company.

3 Q. Are you aware of a company by the name of
4 Brubaker?

5 A. No.

6 Q. You are not aware that during your tenure
7 starting in 1985 a company by the name of P.E.
8 Brubaker Associates came in and analyzed the research
9 that had been done by Reynolds in the biological
10 division in the late '60s?

11 MR. DAVIS: Objection.

12 A. I don't recall.

13 Q. And apparently Mr. Brubaker -- the Brubaker
14 Associates findings were never made available to
15 you?

16 MR. DAVIS: Objection.

17 A. I don't recall any Brubaker so I don't know what
18 you are talking about.

19 Q. Has R.J. Reynolds to this day ever made
20 available the results of the Brubaker Associates
21 work?

22 A. I told you I'm not aware of the Brubaker name
23 whatsoever. I don't recall it.

24 Q. Let's go back one more time to Plaintiffs'
25 Exhibit 1051, the "Smoking and lung cancer: A second

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1 opinion" document. Do you perhaps have it under
2 there? There it is.

3 A. There it is.

4 Q. You state, "What About Laboratory Experiments";
5 correct?

6 A. That's what this issue statement says, yes.

7 Q. And in the second paragraph you state that
8 "Despite elaborate and costly research, not one of
9 these smoke-inhalation experiments has ever produced
10 the lung cancer it was looking for"; correct?

11 A. That's what this says.

12 Q. Are you aware of the work of Dr. Auerbach?

13 A. I don't remember that name.

14 Q. Did Dr. Senkus ever tell you there was a
15 scientist named Dr. Auerbach who in 1970 reported
16 that he had induced squamous cell carcinoma in the
17 lungs of dogs exposed to cigarette smoking via
18 inhalation?

19 A. I don't remember any of that.

20 Q. Had you known that, you wouldn't have made this
21 statement; correct?

22 MS. McDOLLE: Objection.

23 A. I said I don't remember that incident and what
24 we said here was based upon my knowledge at this
25 time.

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1 Q. Well apparently if your knowledge is incorrect,
2 then this statement is incorrect as well?

3 MR. DAVIS: Objection.

4 A. I didn't say my knowledge is incorrect.

5 Q. If Dr. Auerbach did in fact report that he found
6 squamous cell lung cancer in the lungs of dogs
7 following smoke inhalation, your statement here that,
8 quote, "Despite elaborate and costly research, not
9 one of the smoke-inhalation experiments has ever
10 produced the lung cancer it was looking for" is flat
11 out wrong; correct?

12 MR. DAVIS: Objection.

13 MS. McDOLLE: Objection to the hypothetical.

14 A. I don't agree with that. That's -- that's --
15 you can make the charge however you want.

16 (Interruption by the reporter.)

17 MS. McDOLLE: And speculation.

18 MR. O'FALLON: Do you want to take a quick
19 break?

20 MR. DAVIS: Yes.

21 (Recess taken from 9:58 to 10:09 a.m.)

22 BY MR. O'FALLON:

23 Q. Sir, I'd like to move to the topic of
24 addiction. You have testified previously that
25 smoking is not addictive; correct?

1 A. That's correct.

2 Q. Most recently, in 1994, you testified before the
3 Congress of the United States that you did not
4 believe that smoking was addictive; correct?

5 A. That's correct.

6 Q. In 1983, when asked to define the word
7 "addiction," you defined it as follows. You said,
8 quote, as layman, addiction to me would mean total
9 dependence and almost total ability to do without or
10 give it up. Do you recall that?

11 MS. McDOLE: Objection. Can we see the
12 statement?

13 A. Repeat it, please.

14 MS. McDOLE: Objection to form.

15 MR. O'FALLON: Ms. McDole, in order to
16 impeach somebody, you first have to lay some
17 foundation, so the statement will come once I get the
18 foundation laid.

19 MS. McDOLE: According to all the rules I'm
20 familiar with, in order to impeach someone you have
21 to have an inconsistent statement first.

22 MR. O'FALLON: That's why I'm asking the
23 statement.

24 MS. McDOLE: It sounds to me like you are
25 quoting testimony.

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1 MR. O'FALLON: That's how you impeach in
2 Minnesota; I'm not sure how you do it in Texas.

3 MS. McDOLE: I haven't heard an
4 inconsistent statement.

5 MR. O'FALLON: That's what we are trying to
6 get to, ma'am.

7 MS. McDOLE: Sir, usually you show the
8 witness the statement.

9 BY MR. O'FALLON:

10 Q. Would you agree with the following definition of
11 addiction: That as a layman, addiction to you would
12 mean total dependence and almost total inability to
13 do without or give it up?

14 A. I'm not going to agree with that definition. If
15 that was a statement that I made in answer to a
16 question and that was the best way I could phrase it
17 at that time, then I would agree with the way I said
18 it.

19 Q. Okay. I'm going to show you what's --

20 I'm going to show you page 161 of the Dewey
21 deposition. This was that deposition taken in 1983,
22 and would you just read for me the highlighted
23 questions and answers, sir.

24 Again for the record, that says "Horrigan
25 Direct" at the top of it; correct?

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1 A. Yes. And it says, Q, question: How do you
2 understand the word "addictive"? How do you define
3 it? It's a word you've used in testimony, correct,
4 addiction?

5 Answer: Yes.

6 Question: How did you mean to define the term
7 "addiction" as you used it in your testimony?

8 Answer: As a layman, addiction, to me, would
9 mean total dependence and almost total inability to
10 do without it or give it up.

11 Q. That is how you testified in 1983. Is that
12 still how you would identify addiction today?

13 A. In a sense, yes.

14 Q. Was that the definition of addiction you meant
15 when you testified before Congress in 1994?

16 A. When I testified before Congress in '94, I had
17 my own views on addiction. I was not at all fresh in
18 my mind of that definition as given in 1982 or 1983.

19 Q. But is that approximately the same definition
20 you had in your mind when you testified in 1984 --
21 1994?

22 MS. McDOLE: Objection to the form.

23 A. I have my own sense what addiction is and I
24 stated that then.

25 Q. As you sit here today, does addiction mean to

1 you total dependence and almost total ability to do
2 without it or give it up?

3 A. Addiction to me is something that causes
4 mind-altering or physical-behavior-altering effects
5 and requires in most instances rehabilitation by
6 clinical treatment.

7 Q. You understand that there is numerous smokers
8 that need clinical rehabilitation in order to quit
9 smoking; correct?

10 MS. McDOLE: Objection to the form of the
11 question.

12 A. I'm not aware of any clinics that people go to
13 to smoke -- quit smoking.

14 Q. You are not aware that one of the largest
15 clinics in the country for the treatment of smoking
16 is at the Mayo Clinic in my state of Minnesota?

17 A. I'm not aware of the Mayo Clinic facility for
18 that particular habit.

19 Q. So you no longer agree that simply whether or
20 not someone can quit is the hallmark of your
21 definition of addiction; correct?

22 MS. McDOLE: Objection to the form of the
23 question.

24 MR. DAVIS: Objection.

25 A. I didn't say that. I continued to believe that

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1 cigarettes are not addictive.

2 Q. That's not my question, sir. My question is
3 that it's no longer the hallmark of your definition
4 of addiction, the ability or inability to quit;
5 correct?

6 MR. DAVIS: Objection.

7 MS. McDOLE: Objection to the form of the
8 question.

9 A. I don't know what you mean by "hallmark." I've
10 given different definitions of addiction, I think I
11 gave a different one here this morning. If it is not
12 clear the parallels between them, I can't help it.

13 Q. So your definition of addiction has changed over
14 time; correct?

15 MR. DAVIS: Objection.

16 MS. McDOLE: Objection to the form of the
17 question?

18 A. My definition of addiction, as the best I can as
19 a layman, asked the question and I tried to answer it
20 as I understand addiction. I don't have a definition
21 filed away for addiction.

22 Q. Is it safe to say your definition of addiction
23 has changed over time?

24 MR. DAVIS: Objection.

25 A. It is not safe to say that. It is safe to say

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1 my opinion about addiction has never changed.

2 Q. I understand that you will never concede that
3 cigarette smoking is addictive and I doubt I could
4 give you any definition by which you would say it's
5 addictive, but my question is: Has your own internal
6 definition of addiction changed over time?

7 MS. McDOLE: Objection to the argumentative
8 statement.

9 MR. DAVIS: Objection.

10 A. I continue to say to you I do not have, quote, a
11 definition, end of quote, for addiction that I use
12 from time to time. I have my own beliefs about
13 addiction and they hold true.

14 Q. If you don't have a definition for addiction,
15 it's kind hard to determine whether cigarette smoking
16 would meet your definition, wouldn't it?

17 MR. DAVIS: Objection.

18 MS. McDOLE: Objection, argumentative.

19 A. I say that cigarettes are not an addiction.

20 Q. Would you agree, Mr. Horrigan, that nicotine is
21 a potent drug with a variety of physiological
22 effects?

23 A. I would not agree with that characterization.

24 Q. Do you know whether that was an internal
25 statement by R.J. Reynolds?

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1 A. I just heard it from you for the first time.

2 Q. Do you believe that the tobacco industry may be
3 thought of as a specialized, highly ritualized and
4 stylized segment of the pharmaceutical industry?

5 A. I believe the tobacco industry has been
6 characterized in many ways by the prohibitionists and
7 anti-smoking zealots.

8 Q. Do you think that's a statement made by a
9 prohibitionist and anti-smoking zealot, sir?

10 A. I have no idea where your statement came from.

11 Q. Do you believe that nicotine is known to be a
12 habit-forming alkaloid, hence the confirmed user of
13 tobacco products is primarily seeking the
14 physiological satisfaction derived from nicotine?

15 A. You are reading --

16 MR. DAVIS: Objection.

17 A. -- statements that might appear in various
18 publications or reports or whatever, so I can't -- I
19 can't answer that question.

20 Q. How do you know that, sir?

21 A. Because I'm saying to you that cigarettes are
22 not addictive, I have no idea, because I am a
23 non-smoker, what pleasure or benefit a smoker gets.
24 I just know that they smoke cigarettes for the
25 pleasure of smoking.

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1 Q. But certainly R.J. Reynolds as a company knew
2 the pleasures and benefits derived from smoking;
3 correct?

4 A. Reynolds and any other tobacco manufacturer
5 responds to a social custom that's been in effect for
6 hundreds of years.

7 Q. And one of the keys to that, quote, social
8 custom, end quote, is nicotine; correct?

9 A. Nicotine has a positive effect in terms of how
10 cigarette or how tobaccos are blended that when taken
11 all together deliver a product that consumers react
12 favorably to.

13 Q. Let's take a look at a document from the R.J.
14 Reynolds' files. It's Plaintiffs' Exhibit 1057.
15 It's Bates numbered 50091 5683 through 5691. This is
16 a document entitled "RESEARCH PLANNING MEMORANDUM ON
17 THE NATURE OF THE TOBACCO BUSINESS AND THE CRUCIAL
18 ROLE OF NICOTINE THEREIN"; correct?

19 A. That's what it says on this cover sheet.

20 Q. And if you look at the back page, it's dated
21 April 14 of 1972 and it's signed by Dr. Claude E.
22 Teague, Jr.; correct?

23 A. Yes.

24 Q. Let's look at the memorandum part. Dr. Teague
25 states that, "In a sense the tobacco industry may be

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1 thought of as being a specialized, highly ritualized
2 and stylized segment of the pharmaceutical industry";
3 correct?

4 A. That is Dr. Teague's sense of it as he
5 represented it here.

6 Q. And again he was a -- an employee of R.J.
7 Reynolds; correct?

8 A. I said this is Dr. Teague's characterization of
9 the business as he perceived it.

10 Q. My question, sir, that you understood that Dr.
11 Teague was an employee of R.J. Reynolds?

12 A. I understand that.

13 Q. You understand that he was a senior scientist
14 with the company?

15 A. I understand he had a major role in the company.

16 Q. He then goes on to state that "Tobacco products,
17 uniquely, contain and deliver nicotine, a potent drug
18 with a variety of physiological effects"; correct?

19 A. That's what he says here.

20 Q. He said, "Related alkaloids, and probably other
21 compounds, with desired physiological effects are
22 also present in tobacco and/or its smoke"; correct?

23 A. That's what he says.

24 Q. It says, "Nicotine is known to be a
25 habit-forming alkaloid, hence the confirmed user of

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1 tobacco products is primarily seeking the
2 physiological 'satisfaction' derived from nicotine --
3 and perhaps other active compounds"; correct?

4 A. That's what he goes on to say.

5 Q. He goes on to say that "His choice of product
6 and pattern of usage are primarily determined by his
7 individual nicotine dosage requirements and
8 secondarily by a variety of other considerations
9 including flavor and irritancy of the product, social
10 patterns and needs, physical and manipulative
11 gratification, convenience, cost, health
12 considerations and the like"; correct?

13 A. That's what he says.

14 Q. He then concludes, "Thus a tobacco product is,
15 in essence, a vehicle for delivery of nicotine
16 designed to deliver the nicotine in a generally
17 acceptable and attractive form"; correct?

18 A. That's the way he characterized it.

19 Q. He then goes on to conclude, "Our industry is
20 then based upon design, manufacture and sale of
21 attractive dosage forms of nicotine, and our
22 Company's position in our Industry is determined by
23 our ability to produce dosage forms of nicotine which
24 have more overall value, tangible or intangible, to
25 the consumer than those of our competitors"; correct?

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1 A. This is what he says.

2 Q. Now you've testified previously that the tobacco
3 companies have not manipulated nicotine; correct?

4 A. That's correct.

5 Q. The fact of the matter is that the tobacco
6 companies did manipulate the form of nicotine; isn't
7 that true?

8 MS. McDOLLE: Objection to form.

9 MR. DAVIS: Objection.

10 A. The tobacco companies, in formulating products,
11 achieved the, I'll call it, the consumer accepted
12 balance of nicotine to add flavor to the other blends
13 of cigarettes or tobacco that goes in. I do not call
14 that manipulating.

15 Q. Are you aware that nicotine in smoke occurs in
16 two forms, a salt form, or bound form, and a free
17 base, or free nicotine form?

18 A. No, I'm not.

19 Q. Are you aware that free nicotine gives more
20 nicotine kick?

21 A. I am not aware of these various technical
22 aspects of nicotine composition.

23 Q. And you are also not aware that R.J. Reynolds
24 manipulated the pH level of its smoke in order to
25 increase the free nicotine, in order to increase the

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1 nicotine kick in its products?

2 MR. DAVIS: Objection.

3 MS. McDOLE: Objection to the form.

4 A. Your clever choice of the word "manipulate" I
5 object to. Our product design and marketing people
6 develop products with the proper balance of all the
7 ingredients to deliver a satisfactory smoke.

8 MR. O'FALLON: Move to strike that as
9 nonresponsive.

10 Q. My question is: --

11 MS. McDOLE: Objection to the motion.

12 Q. -- were you not aware that R.J. Reynolds
13 manipulated the pH level of its smoke in order to
14 increase the free nicotine, which in turn increased
15 the nicotine kick in its products?

16 MR. DAVIS: Objection.

17 MS. McDOLE: Objection to form.

18 A. You continue to use the word "manipulate" and I
19 continue to tell you that our people blended
20 cigarettes with all the ingredients to come up with a
21 satisfactory product.

22 Q. Let's look at page 8 of this particular
23 document, last Bates number is 5690?

24 A. I'm sorry, what page?

25 Q. Page 8 at the top, last four Bates numbers are

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1 5690.

2 A. Yes.

3 Q. Do you see where it says "INDICATED RESEARCH
4 DEPARTMENT ACTIVITIES AND APPROACHES"?

5 A. Yes.

6 Q. It says, "If the above is a valid line of
7 reasoning, then our long-term future courses of
8 action should be as follows," and number 1 is,
9 "Recognize the key role of nicotine in consumer
10 satisfaction, and design and promote our products
11 with this in mind"; correct?

12 A. That's what he says.

13 Q. Two is: "More precisely define the minimum
14 amount of nicotine required for 'satisfaction' in
15 terms of dose levels, dose frequency, dosage form and
16 the like"; correct?

17 A. That's what he says.

18 Q. "Sponsor in-depth studies of physiological,
19 psychological and other effects of nicotine, aimed at
20 demonstrating the beneficial effects of nicotine and
21 at disproving allegations that nicotine produces
22 major adverse effects"; correct?

23 A. That's what he says.

24 Q. Four, "Study, design and evaluate new or
25 improved systems for delivery of nicotine which will

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1 provide the minimum satisfying amount of nicotine in
2 attractive form, free of allegedly harmful combustion
3 products"; correct?

4 A. That's what he says.

5 Q. Five, "Study means for enhancing nicotine
6 satisfaction via synergists, alteration of pH, or
7 other means to minimize dose level and maximize
8 desired effects"; correct?

9 A. This is what he recommended, his memorandum
10 states.

11 Q. That last statement, number 5, enhancing
12 nicotine satisfaction, that would be nicotine
13 manipulation; correct?

14 MR. DAVIS: Objection.

15 MS. McDOLE: Objection to form.

16 A. That is -- ask the question again, please.

17 Q. The last sentence, the last statement, number 5,
18 where it talks about enhancing nicotine satisfaction
19 via synergistics, alteration of pH or other means to
20 minimize dose level and maximize desired effects,
21 that would be nicotine manipulation for the purpose
22 of maximizing the pharmacological effect of nicotine;
23 correct?

24 MR. DAVIS: Objection.

25 MS. McDOLE: Objection to the form.

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1 A. That's your conclusion, that's not my
2 conclusion.

3 Q. That's a reasonable conclusion that I make,
4 though, isn't it, sir?

5 MR. DAVIS: Objection.

6 MS. McDOLE: Objection.

7 A. I call it an unreasonable conclusion from my
8 viewpoint because I can read as well as you can.

9 Q. And no one in 1994 when he went before the
10 Congress of the United States, neither you nor Mr.
11 Johnston nor Mr. Schindler told the Congress anything
12 about the fact you looked at pH as a means of
13 altering or enhancing nicotine satisfaction; correct?

14 MR. DAVIS: Objection.

15 MS. McDOLE: Object to the assumption.
16 That's not what the document says.

17 A. I can't speak for any other executives who
18 testified at that time.

19 Q. In fact R.J. Reynolds did pursue that program of
20 altering pH to enhance nicotine; correct?

21 MR. DAVIS: Objection.

22 A. I don't recall.

23 Q. I'm going to hand you a document that's been
24 previously marked in this litigation as Plaintiffs'
25 Exhibit 1058. It is a document Bates numbered 51122

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1 3463 through 3484.

2 Have you seen this document previously, sir?

3 A. No, I don't believe so.

4 Q. The title of this document is "IMPLICATIONS AND
5 ACTIVITIES ARISING FROM CORRELATION OF SMOKE pH WITH
6 NICOTINE IMPACT, OTHER SMOKE QUALITIES, AND CIGARETTE
7 SALES"; correct?

8 A. That's what it says.

9 Q. Let's look on the first full page of the
10 document after the title page, last three Bates --
11 four Bates numbers 3465. Under introduction and
12 objectives, it states, "This year the continuing,
13 vigorous sales growth of various competitive
14 cigarette brands, especially Marlboro and Kool,
15 prompted an intensive study of the physical and
16 chemical properties of those brands as compared with
17 our brands"; correct?

18 A. That's what it says.

19 Q. It says, "This was aimed at...identifying any
20 significant property differences which might
21 correlate with market performance,...measuring and
22 monitoring such differences, and...learning how such
23 differences are achieved, permitting us to achieve
24 similar effects in our existing or new brands, if
25 desired"; correct?

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1 A. That's what it says.

2 Q. About this time period, around 1972, Marlboro
3 was starting to gain an increasing share of the
4 cigarette market; correct?

5 A. What's the date of this document?

6 Q. I believe it's around 1972.

7 MS. McDOLE: Objection to the form.

8 A. So ask the question again, please.

9 Q. It was about this time period, around 1972, that
10 Marlboro was starting to begin an increase in share
11 of the cigarette market; correct?

12 A. I don't recall when Marlboro started advancing
13 in market share.

14 Q. In any event, by the time you got there in 1978,
15 Marlboro was definitely on the rise and would in time
16 become the number one brand of cigarette on the
17 market; correct?

18 A. That's correct.

19 Q. Let's look at the second page, "SMOKE pH AND
20 'FREE' NICOTINE." Are you with me? Roman numeral
21 III.

22 A. I'm not with you but I'm reading at the same
23 time as you are.

24 Q. That's what I mean to imply.

25 A. Fine.

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- 1 Q. You are at the same spot in the document I am?
- 2 A. That's exactly right.
- 3 Q. Great. I just want to make sure that you're at
- 4 the spot I am before I start.
- 5 A. I wanted to make sure you understood where I was
- 6 today in this line of questioning, sir.
- 7 Q. Says Roman number III, "SMOKE PH AND 'FREE'
- 8 NICOTINE." Says, "In essence, a cigarette is a
- 9 system for delivery of nicotine to the smoker in
- 10 attractive, useful form"; correct?
- 11 A. Yes.
- 12 Q. It says, "At 'normal' smoke pH, at or below
- 13 6..., essentially all the smoke nicotine is
- 14 chemically combined with acidic substances, hence is
- 15 non-volatile and relatively slowly absorbed by the
- 16 smoker"; correct?
- 17 A. Yes.
- 18 Q. It says, "As the smoke pH increases above about
- 19 6..., an increasing proportion of the total smoke
- 20 nicotine occurs in 'free' form, which is volatile,
- 21 rapidly absorbed by the smoker, and believed to be
- 22 instantly perceived as nicotine 'kick'"; correct?
- 23 A. That's what this says.
- 24 Q. Says, Chart Roman numeral VIII "shows how the
- 25 proportion of 'free' nicotine increases as pH goes

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1 higher"; correct?

2 A. That's what this says.

3 Q. Let's look at Chart VIII. It's at Bates number,

4 last four digits, 3479. Are you there?

5 A. Page 13?

6 Q. Yeah.

7 A. There is no -- Yes, there is. Okay.

8 Q. It's kind of hidden over there on the side.

9 A. I've got it.

10 Q. This chart is entitled "pH, NICOTINE AND SMOKE

11 QUALITY"; correct?

12 A. Yes.

13 Q. It's basically a graph and along the bottom

14 portion of the graph it says "PERCENT OF NICOTINE

15 THAT IS FREE"; correct?

16 A. That's what it says.

17 Q. And along the left-hand side going up and down

18 it has the pH levels; correct?

19 A. That's correct.

20 Q. And it shows that as the pH of the smoke

21 increases, so does the percent of free nicotine;

22 correct?

23 A. That's what this says.

24 Q. And on the side where it says "EFFECTS ON

25 SMOKER," up in the free nicotine area it indicates

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1 that that's an area of rapid nicotine absorption;

2 correct?

3 A. I guess so.

4 Q. Let's go back to page 2 and the Roman numeral

5 III. In the second paragraph, he goes on to state,

6 quote, "Marlboro and Kool deliver about the same

7 amounts of total smoke nicotine as do our comparable

8 brands (Charts IX and X)"; correct?

9 A. Right.

10 Q. However, Marlboro smoke is typically at pH 6.8

11 to 7.2 [sic.] and Kool smoke is typically at 6.4 to

12 6.6 as compared with Winston smoke at pH 5.8 to 6.0

13 and Salem smoke at 6.0 to 6.2; correct?

14 A. That's what this says.

15 Q. He says, "Thus, Marlboro and Kool smokes contain

16 more 'free' nicotine than comparable brands, hence

17 would be expected to show more instantaneous nicotine

18 'kick' than our brands"; correct?

19 A. That's what this says.

20 Q. He then states that "As a result of its higher

21 smoke pH, the current Marlboro, despite a two-thirds

22 reduction in smoke 'tar' and nicotine over the years,

23 calculates to have essentially the same amount of

24 'free' nicotine in its smoke as did the early

25 WINSTON"; correct?

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1 A. That's what it says.

2 Q. "Over the same period, with some reduction in
3 smoke pH and about two-thirds reductions in smoke
4 'tar' and nicotine, the calculated amount of 'free'
5 nicotine in WINSTON smoke has decreased by about
6 two-thirds"; correct?

7 A. That's what this says.

8 Q. He then says, "Thus, currently the calculated
9 amount of 'free' nicotine in the Marlboro smoke is
10 almost three times the amount in WINSTON smoke";
11 correct?

12 A. That's what it says.

13 Q. Let's look at the third page, under Roman
14 numeral V, where it talks about marketing
15 correlations and implications. Do you see where I'm
16 at at the top of that page?

17 A. Yes.

18 Q. It states, "Putting all of this together, we see
19 Marlboro (and other Philip Morris brands) was
20 compared with WINSTON, our other brands and most
21 other brands on the market shows: (1) higher smoke
22 pH (higher alkalinity), hence increased amounts of
23 'free' nicotine in smoke, and higher immediate
24 nicotine 'kick'"; correct?

25 A. Yes.

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1 Q. He then concludes in the next paragraph, "These
2 differences in nicotine impact and other smoke
3 qualities arising from smoke pH increases would be
4 expected to give rise to difference in consumer
5 response, hence market performance. Our preliminary
6 correlations strongly suggest that this is the case
7 and that the vigorous, sustained growth in sales of
8 Marlboro (and other Philip Morris brands) and Kool
9 correlates closely with the increased smoke pH, hence
10 increased 'free' nicotine and nicotine impact of
11 those brands"; correct?

12 A. That's what this report says.

13 Q. It was also known that the way that Philip
14 Morris increased the pH was through the addition of
15 ammonia to its blends; correct?

16 A. Where does it say that?

17 Q. Let's look back on page 2 again, under section
18 Roman numeral IV, "SMOKE pH AND OTHER SMOKE
19 QUALITIES." It says, In addition to enhancing
20 nicotine "kick", increasing the pH (increasing
21 alkalinity) of smoke above 6, above about 6 --

22 A. I see it.

23 Q. -- causes other changes, particularly when the
24 increase in smoke pH is achieved by adding ammonia to
25 the blend; correct?

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1 A. Correct.

2 Q. They also note here that you can only go so high
3 with this pH. It's stated in the -- not the next
4 sentence but the sentence after that, "It should be
5 noted, however, that if the smoke pH goes much above
6 7 at normal total smoke nicotine levels (1.1-1.6...)
7 the amount of 'free' nicotine becomes high, and this
8 may cause harshness in the throat"; correct?

9 A. That's what this report says.

10 Q. So apparently what they want to do is increase
11 the smoke pH to increase this free nicotine up to a
12 certain level; correct?

13 MR. DAVIS: Objection.

14 A. This seems to be talking about trying to achieve
15 a better balance of nicotine in the blends,
16 consistent with the way competitors' products were
17 formulated.

18 Q. Right. But one of the things they were doing
19 was manipulating the amount of free nicotine that's
20 available to the smoker so they can increase that
21 nicotine kick?

22 MR. DAVIS: Objection.

23 MS. McDOLE: Objection to the form.

24 A. You continue to use the word "manipulate," I
25 continue to say "formulate" so that the product is --

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1 meets with acceptance by consumers, which is what
2 Marlboro and Kool are obviously doing.

3 Q. And in fact RJR also instituted an ammoniation
4 process; correct?

5 A. I believe so. I don't remember all these
6 technical aspects.

7 Q. And part of the ammoniation process was to
8 design to increase this kick, this physiological
9 impact of the smoke; correct?

10 MS. McDOLLE: Objection to form.

11 A. I don't recall how all these things worked.

12 Q. I'm going to show you a document that's been
13 previously marked as Plaintiffs' Exhibit 1062.
14 Plaintiffs' Exhibit 1062 is a document Bates stamp
15 numbered 501 -- Strike that -- 50901 8864 through
16 8865A. Have you seen this document previously?

17 A. I don't recall ever seeing it.

18 Q. It's been represented to us by R.J. Reynolds
19 that this document was from the 1981 time period.

20 A. I said I don't recall seeing it.

21 Q. The technology referred to is ammoniation;
22 correct?

23 A. That's what the memorandum states is the
24 subject, yes.

25 Q. As background, it states, quote, "RJR began

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1 working with ammoniation of tobacco and tobacco
2 by-products in the 1950s, but did not apply the
3 technology"; correct?

4 A. That's what this says.

5 Q. It says, "Philip Morris began using an
6 ammoniated sheet material in 1965 and increased use
7 of the sheet from 1965 to 1974"; correct?

8 A. That's what this says.

9 Q. "This time period corresponds to the dramatic
10 sales increase Philip Morris made from 1965 to 1974";
11 correct?

12 A. That's what it says.

13 Q. It says, "The use of ammonia to expand tobacco
14 was initiated by Philip Morris in 1974 and resulted
15 in an adjustment to the PM sheet making process";
16 correct?

17 A. That's what it says.

18 Q. RJR introduced ammoniated sheet material in the
19 Camel filter product in 1974; correct?

20 A. That's what this report says.

21 Q. It then indicates that better market performance
22 was indicated in subsequent years; right?

23 A. That's what it says.

24 Q. It says, "Low 'tar' products at RJR were
25 designed with ammoniated sheet material beginning in

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1 1974"; correct?

2 A. That's what it says.

3 Q. Let's look on the next page where it talks about
4 the product characteristics resulting from ammonia.

5 Ammonia leads to milder, smoother taste; correct?

6 A. That's what it says.

7 Q. Higher smoke pH; correct?

8 A. That's what it says.

9 Q. More chocolate-burley type; negative flavor
10 without negative burley characteristics; correct?

11 A. That's what it says.

12 Q. Cleaner taste with more free nicotine; correct?

13 A. That's what it says.

14 Q. And stronger physiological impact with the less
15 harshness; correct?

16 A. That's what it says.

17 Q. So one of the purposes behind putting ammonia on
18 RJR tobacco was to deliver more free nicotine;
19 correct?

20 MS. McDOLE: Objection to the form.

21 A. I'm assuming from these documents that one of
22 the purposes was to continue to improve our blends to
23 be more competitive.

24 Q. And apparently one of the ways you did that was
25 to increase the free nicotine available in your

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1 smoke; correct?

2 MS. McDOLE: Objection to the form.

3 A. You are separating out the words "free
4 nicotine." I'm just saying the total product
5 delivery is what I was aware of and that's what I
6 think all this addresses.

7 Q. Just so we are clear, you never told the
8 Congress that R.J. Reynolds controlled the amount of
9 free nicotine in its tobacco products; correct?

10 MR. DAVIS: Objection.

11 MS. McDOLE: Objection to the form.

12 A. The question was never asked in that context and
13 never made any representation one way or the other.

14 Q. They simply asked you whether they manipulated
15 -- manipulated nicotine; correct?

16 A. Just as you're implying here, yes.

17 Q. And you didn't think that covered such things as
18 increasing the free nicotine in order to get a higher
19 nicotine kick?

20 MS. McDOLE: Objection to the form.

21 MR. DAVIS: Objection.

22 A. I fundamentally disagree with this line of
23 questioning, as I did in Congress, with the word
24 "manipulate."

25 Q. How about control, would you agree with the word

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1 "control"?

2 A. I talk about product development and blend
3 configuration and obviously you control all factors
4 in any brand just as you control all ingredients in
5 bread or tea or soup.

6 Q. And you don't believe the word "control" is
7 synonymous with the word "manipulate"?

8 A. I don't agree with the onerous -- onerous
9 implications that you try to make in your line of
10 questioning, which is my problem this morning.

11 Q. Had the congressman asked you whether you
12 controlled nicotine while you were at RJR, would you
13 have told them about this free nicotine?

14 MR. DAVIS: Objection.

15 A. You are asking questions about scientific
16 documents here that were not at all in the context we
17 were talking in Congress so I can't answer the
18 question.

19 MR. O'FALLON: I'm going to show you
20 another document that's been previously marked as
21 Plaintiffs' Exhibit 1094.

22 (Interruption by the reporter.)

23 (Discussion off the record.)

24 BY MR. O'FALLON:

25 Q. Mr. Horrigan, Plaintiffs' Exhibit 1094 is a

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1 document Bates stamp numbered 50443 8506 through
2 8512. Do you recognize this document?
3 A. No.
4 Q. This is a memorandum to a Dr. G. R. DiMarco.
5 Are you familiar with Dr. DiMarco?
6 A. Yes, I am.
7 Q. Dr. DiMarco was the head of research while you
8 were there?
9 A. That's correct.
10 Q. And it's from an E. Bernasek and C. W. Nystrom.
11 Do you recognize those individuals?
12 A. Not really.
13 Q. They state, "Attached are position papers
14 describing our rationale for using the following
15 additives in RJRT tobacco flavor formulations,"
16 including ammonia; correct?
17 A. That's one of the items listed.
18 Q. I'd ask you to turn -- Oh, let's turn to the
19 next page just so we can get a date on the document.
20 It says, draft August 9, 1982; correct?
21 A. Yes.
22 Q. Let's look on page, last four Bates numbers,
23 8509, under the paragraph entitled "Ammoniation of
24 Reconstituted Tobacco." It states that "Studies on
25 the ammoniation of reconstituted tobacco were started

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1 in 1973 as a result of R&D studies carried out during
2 the 1950's and early 1970"; correct?

3 A. That's what this says.

4 Q. It says, "During the 1950's, Dr. C. E. Teague,
5 Jr. investigated the ammoniation of tobacco and
6 tobacco stems and reported dramatic improvements in
7 the smoking qualities of ammoniated tobacco stems";
8 correct?

9 A. That's what this says.

10 Q. It says, "Smoke harshness and irritation were
11 reduced and taste properties were improved";
12 correct?

13 (Interruption by the reporter.)

14 A. That's what this says.

15 Q. He goes on to state that, "In the early 1970's,
16 a major R&D program was initiated to investigate the
17 physical chemistry of tobacco and tobacco smoke in an
18 attempt to gain a better understanding of the factors
19 affecting smoke harshness, irritation and strength";
20 correct?

21 A. That's what this says.

22 Q. "These studies led to the following observations
23 and conclusions.

24 "(1) The pH of cigarette smoke is important to
25 smoke quality and can be used as a measure of the

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1 physiological strength of smoke"; correct?

2 A. That's what this report says.

3 Q. And do you understand that to mean the effect of
4 the nicotine, the physiological effect of nicotine?

5 MS. McDOLLE: Objection to the form.

6 MR. DAVIS: Objection.

7 A. I'm just reading it the way it's written and I
8 can't answer that question.

9 Q. Number (2) says that "Ammonia in smoke is one of
10 the major pH controlling components"; correct?

11 A. That's what this says.

12 Q. Going on to the next page, at finding (4), it
13 says, "Philip Morris introduced the use of added
14 ammonia in their cigarette products in 1965";
15 correct?

16 A. That's what it says.

17 Q. "They used diammonium phosphate in their
18 reconstituted tobacco process to eliminate ammonium
19 pectinate prior to casting a reconstituted tobacco
20 sheet"; correct?

21 A. That's what it says.

22 Q. It says, "Philip Morris brands, especially
23 Marlboro, began growing in sales very rapidly after
24 the introduction of added ammonia"; correct?

25 A. That's what this says.

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1 Q. (6) states that "Correlation studies relating
2 increased smoke pH to sales trends showed a very
3 strong positive correlation"; correct?

4 A. That's what they report.

5 Q. It says, "Studies of the effect of ammonia on
6 smoke composition showed a reduction in aldehydes,
7 especially formaldehyde, and an increase in the level
8 of pyridines, pyrazines, and minor alkaloids";
9 correct?

10 A. That's what this says.

11 Q. "Smoking panel results showed a decrease in
12 smoke irritation and harshness and an increase in
13 physiological satisfaction with increasing ammonia
14 content"; correct?

15 A. That's what this states.

16 Q. And we have seen previous documents where Dr.
17 Teague referred to physiological satisfaction as the
18 sensations associated with nicotine; correct?

19 MS. McDOLLE: Objection to the form.

20 A. I don't recall the context in which he reported
21 that.

22 Q. He then goes on to state, "Based on the above
23 observations, it was decided to investigate the use
24 of ammoniated reconstituted tobacco (G7A) as a means
25 of increasing the smoke pH of RJRT'S cigarette

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1 products"; correct?

2 A. That's what this says.

3 Q. It says, "NFO tests indicate that the smokers
4 prefer products containing G7A over products
5 containing only G7 (untreated reconstituted
6 tobacco)"; correct?

7 A. That's what this says.

8 Q. Since the introduction in Camel filter in 1975,
9 G-7A has been tested and/or introduced in 19
10 additional brands; correct?

11 A. That's what this says.

12 Q. So numerous Reynolds brands in fact contained
13 ammonia, which would have increased the smoke pH and
14 increased the amount of free nicotine; correct?

15 MR. DAVIS: Objection.

16 MS. McDOLE: Objection to the form of the
17 question.

18 A. State the question again, please.

19 Q. Certainly. So numerous Reynolds brands in fact
20 contained ammonia, which would have increased the
21 smoke pH and increased the amount of free nicotine;
22 correct?

23 MS. McDOLE: Objection. In reading the
24 document, you skipped over the part that says ammonia
25 occurs naturally in tobacco.

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1 MR. O'FALLON: Ma'am, are you trying to
2 state for the record that R.J. Reynolds did not add
3 ammonia to reconstituted sheet? Because we have
4 testimony after testimony and document after document
5 that proves for a fact that they did.

6 MS. McDOLE: I don't think that was the
7 question you asked, whether ammonia was in
8 cigarettes.

9 A. Ask the question again, please.

10 Q. So numerous Reynolds brands in fact contained
11 added ammonia, which would have increased the smoke
12 pH and increased the amount of free nicotine;
13 correct?

14 MS. McDOLE: Objection to the form of the
15 question.

16 A. I don't recall those specifics. I recall that
17 as new products were launched, they continued to try
18 to improve the blend configuration.

19 Q. Now you yourself were concerned that Philip
20 Morris might be adding nicotine to its products;
21 correct?

22 A. I don't recall that as a specific concern.

23 Q. I'm going to hand you --

24 MR. O'FALLON: I'm going to have the
25 reporter mark as a document a document Bates stamp

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1 numbered 50092 9525.

2 (Plaintiffs' Deposition Exhibit 4110 was
3 marked for identification.)

4 BY MR. O'FALLON:

5 Q. Sir, Exhibit 4110 is a document dated July 3,
6 1980; correct?

7 A. Yes.

8 Q. This is an interoffice correspondence from
9 yourself to two other people; correct?

10 A. Yes.

11 Q. Who are the two other people?

12 A. I recall that Dr. Morris was then head of R&D
13 and I believe it was one of the responsibilities
14 reporting to Carroll Thompson, who was his superior at
15 that time.

16 Q. The subject of this particular document is
17 "Philip Morris - Nicotine Additive"; correct?

18 A. Yes.

19 Q. It says, "I noted the following report in our
20 Weekly Brief: 'Cambridge - Research Department
21 analysis of the reconstituted tobacco contained in
22 Cambridge indicates a nicotine additive possibly in
23 the form of phosphate salt'; correct?

24 A. Yes.

25 Q. It then goes on to say that "You may recall that

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1 I mentioned that the Tobacco Institute had retained a
2 scientific consultant" -- excuse me -- "a few years
3 ago who was working in the area of nicotine research
4 and nicotine additives"; correct?

5 A. That's what this memo states.

6 Q. It states that "It later developed that Philip
7 Morris hired this particular chap away from the
8 Institute and put him in their own R&D Department";
9 correct?

10 A. That's what I said.

11 Q. You state, "I have expressed a concern these
12 last few months that Philip Morris might be capable
13 of some kind of technological breakthrough in the
14 nicotine area which would enable them to quote
15 deliver end quote the same benefits of nicotine but
16 at reduced nicotine levels"; correct?

17 A. That's what I said.

18 Q. So apparently in 1980 you were concerned that
19 Philip Morris was in fact adding nicotine to their
20 products; correct?

21 A. I don't recall --

22 MS. McDOLLE: Objection to form.

23 MR. DAVIS: Objection.

24 A. I don't recall I was concerned with adding
25 nicotine. I was concerned their blending and usage

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1 of nicotine in their product was giving them a
2 superior product.

3 Q. Where does it say the word "blending" anywhere
4 in here, sir?

5 A. Nowhere. I'm telling you my recollection of the
6 memorandum and the way I wrote it. I'm a layman, I'm
7 not a scientist.

8 Q. Well the concern that they were expressing was
9 "nicotine additive possibly in the form of phosphate
10 salt"; correct?

11 A. You are doing a much better job of interpreting
12 what I was trying to state than I was able to
13 apparently communicate.

14 Q. And you also, when you dictated the subject
15 matter, you said, "Philip Morris nicotine additive,"
16 did you not?

17 A. That's what I dictated, yes.

18 Q. And again this whole notion of nicotine
19 manipulation was of a concern to you at this time
20 period; correct?

21 MR. DAVIS: Objection.

22 MS. McDOLE: Objection to the form.

23 A. You continue to use the word "manipulation" as
24 part of your vocabulary and you try to allege or
25 assign it to me, which I totally disagree. I

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1 continued to be concern about nicotine as a -- an
2 ingredient part of our cigarette formulations and how
3 it delivered taste and whether somebody else found a
4 better way to do it than we were doing it,
5 substantial difference between that and what you are
6 alleging.

7 Q. You understand that what the Waxman committee
8 was concerned with was whether or not nicotine was
9 being added to cigarettes; right?

10 A. The Waxman committee was more concerned with the
11 prohibition of cigarettes.

12 Q. Sir, that's your own opinion. But the fact of
13 the matter is, they were asking questions about
14 whether or not people added nicotine to cigarettes;
15 correct?

16 MR. DAVIS: Objection.

17 MS. McDOLE: Objection to the statement.

18 A. I don't recall their line of questioning so I
19 can't answer your question.

20 Q. Did you ever tell the Waxman committee, the
21 United States Congress, that you believe Philip
22 Morris was adding nicotine?

23 A. I was never asked a question along those lines.

24 MS. McDOLE: Objection to the form of the
25 question.

1 A. That I can recall.

2 Q. You certainly didn't volunteer you thought

3 Philip Morris was adding nicotine; correct?

4 MS. McDOLE: Objection to the form of the
5 question.

6 A. Every question I was asked I answered honestly.

7 Q. You felt this project, this nicotine additive,
8 needed immediate attention, didn't you?

9 A. I felt that our entire R&D and product
10 development area needed more attention.

11 Q. Especially as it -- as it regarded nicotine?

12 A. No, not at all. That's your conclusion. I said
13 our total R&D effort needed bolstering.

14 Q. Let's see what you stated in your memo. Why
15 don't you read the last paragraph of the document I
16 just marked as Plaintiffs' Exhibit 4110.

17 A. Read the last paragraph?

18 Q. Yeah, read it out loud for jury.

19 A. "Again, I know that two of you have a whole host
20 of problems and projects you will be working on in
21 the coming months but if my assumptions about Philip
22 Morris are correct, is this another project that
23 needs almost immediate attention?"

24 Q. So you're highlighting that, aren't you?

25 A. I'm prioritizing.

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1 Q. And this is going to the top of the heap?

2 MS. McDOLE: Objection to the form of the
3 question.

4 A. That's a very gallant assumption for you to make
5 in the context of all the things that were going on
6 in that company at that time.

7 Q. Is it your testimony that it did not move to the
8 top of the heap?

9 A. My testimony is that I urged them to look at
10 this as a priority. Your characterization "top of
11 the heap," I cannot understand or agree with it all.

12 Q. Well you understand the phrase "top of the
13 heap"; right?

14 A. I understand the phrase "top of the heap."

15 Q. Means you kind of basically move a project on a
16 stack of projects up to the top?

17 A. I think I said I hoped that they would assign a
18 priority to it. You are implying here we were
19 consumed with nicotine and nicotine additives and
20 that is not the context at all in which this
21 memorandum was written.

22 Q. I'd like to next show you a document that's been
23 previously marked as Plaintiffs' Exhibit 1066.
24 Plaintiffs' Exhibit 1066 is a document Bates stamp
25 numbered 50152 2719 through 2726.

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- 1 Have you seen this document previously?
- 2 A. I don't recall.
- 3 Q. The cover sheet is a memo from Alan Rodgman to
- 4 Dr. Morris entitled "Clarification of my 07/22/80
- 5 Memo on Nicotine Additive"; correct?
- 6 A. That's what it says.
- 7 Q. It's dated September 8, 1980; correct?
- 8 A. That's what it says.
- 9 Q. Says Roy, "You may wish to discuss the attached
- 10 memo with me before you forward copies to Mr.
- 11 Horrigan and Mr. Tompson"; correct?
- 12 A. That's what it says.
- 13 Q. And then it says, "If, in your opinion, there
- 14 are parts of the memo that are still not clear, I
- 15 will revise it before you forward it"; correct?
- 16 A. That's what he says.
- 17 Q. Do you recall receiving the attached memorandum?
- 18 A. I haven't looked at it yet.
- 19 No, I don't recall whether I did or didn't.
- 20 Q. Okay. So you might have, you are just not sure?
- 21 A. I can't say.
- 22 Q. Mr. Rodgman states in his first paragraph that
- 23 his July 22 memo "assumed that the reader was
- 24 familiar with PM's and our past activities in
- 25 developing nicotine technology"; correct?

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1 A. That's what he says.

2 Q. He says, "to put the information in that memo in
3 perspective, the following background is presented";
4 correct?

5 A. That's what he says.

6 Q. He says, "Development of nicotine technology
7 involves the study of a host of factors, chief among
8 which are" tar delivery, nicotine delivery,
9 tar-to-nicotine ratio and nicotine satisfaction. And
10 then he states about nicotine satisfaction: "This is
11 dependent on puff count, puff volume, T/N ratio,
12 total nicotine delivery, nicotine delivery per puff,
13 plus 'free' nicotine per puff. The latter in turn is
14 related to nicotine delivery per puff and smoke pH";
15 correct?

16 A. That's what he says.

17 Q. He then goes down in the footnote that he drops
18 to say, "Most, if not all, nicotine in tobacco is
19 present as a salt, the reaction product of nicotine
20 and an acid, generally referred to as 'bound'
21 nicotine; most of the nicotine in smoke is present as
22 a salt or 'bound' form and a small fraction is
23 present as 'free' nicotine"; correct?

24 A. That's what this says.

25 Q. He then states that the percent of free nicotine

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- 1 depends on smoke pH; correct?
- 2 A. That's what he says.
- 3 Q. He then states that "'Free' nicotine is absorbed
4 more rapidly by the smoker than is 'bound' nicotine";
5 correct?
- 6 A. That's what he says.
- 7 Q. Let's look on the last page of this memo. Up at
8 the top of the page he summarizes some data that was
9 -- or some research that was done on Cambridge and
10 then states that "examination of these nicotine and
11 phosphate" --
- 12 A. Where do you see was done on Cambridge? I see,
13 Cambridge, okay.
- 14 Q. Do you see it up there?
- 15 A. Yes, uh-uh. I see it now.
- 16 Q. He then states, "Examination of these nicotine
17 and phosphate data has led us to speculate that PM
18 may be adding nicotine as the phosphate salt to its
19 sheet materials"; is that correct?
- 20 A. That's what it says.
- 21 Q. However, he then says, "There is no known method
22 whereby a nicotine salt can be extracted from tobacco
23 (or smoke) to determine its composition"; correct?
- 24 A. That's what it says.
- 25 Q. In the last paragraph it says, "Admittedly, RJR

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1 R&D has been playing 'catch up' in this nicotine
2 technology area." And he states, "If the WINSTON B
3 is any indication, we have 'caught up' to the
4 currently used PM system"; correct?

5 A. That's what it says.

6 Q. He says, "How far PM has progressed in new
7 nicotine technology we are not sure, but the
8 Cambridge and other findings (see Table II) suggest
9 that PM is still much involved in developing new
10 nicotine technology"; correct?

11 A. Yes.

12 Q. So there was still this suspicion in R.J.
13 Reynolds that Philip Morris was ahead of you in terms
14 of nicotine technology; correct?

15 A. There was no suspicion, there was an observation
16 that their R&D and product development efforts were
17 still superior to ours.

18 Q. Specifically in the area of nicotine control.

19 A. Amongst others, but nicotine as it relates to
20 total taste.

21 Q. Well it doesn't say there anywhere nicotine as
22 it relates to total taste, does it, sir?

23 A. Well I'm just telling you what my sense of it
24 was then. That's why we bolstered our R&D.

25 Q. That's not what this says. It doesn't say

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1 anything about taste, does it?

2 A. No, --

3 MR. DAVIS: Objection.

4 A. -- but you're taking --

5 MR. DAVIS: Wait. One at a time.

6 Q. It's talking about nicotine technology, is it

7 not, sir?

8 MR. DAVIS: Objection.

9 A. That's right.

10 Q. And again you never shared any of these

11 observations with Congress when you testified before

12 them in 1994; correct?

13 MS. McDOLLE: Objection to the form of the

14 question.

15 MR. DAVIS: Objection.

16 A. These were interoffice memorandums on a

17 continuum regarding product development, and your

18 suggestion that we withheld or I didn't choose to

19 share that with Congress is totally erroneous.

20 Q. Did you share it with Congress?

21 A. I answered the questions that were asked of me

22 in an honest and informed and forthright way.

23 Q. Did you share that information with Congress?

24 A. The questions that were asked in Congress were

25 answered.

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1 Q. Without referring to any of the documents we
2 have now looked at; correct?

3 MS. McDOLE: Objection to the form of the
4 question.

5 MR. DAVIS: Objection.

6 A. The questions that were asked in Congress were
7 answered. My position was not only made verbally,
8 but it was published and presented to Congress
9 following the hearing.

10 Q. And I'm just trying to determine whether you
11 were fulsome in your testimony. And my question is:
12 Did you tell them that you suspected Philip Morris
13 was adding nicotine in 1980?

14 MR. DAVIS: Objection. He's answered your
15 question.

16 MS. McDOLE: Objection to the form of the
17 question.

18 A. I've answered it. The questions that were asked
19 were answered.

20 Q. And your answer to my specific question as to
21 whether you shared with the Congress your
22 observations that Philip Morris may be adding
23 nicotine in 1980, --

24 MS. McDOLE: Objection, asked and answered.

25 Q. -- the answer to that would be no?

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1 MR. DAVIS: Objection.

2 A. The answer to that would not be no, and that
3 question is not a fair question to ask.

4 Q. Why?

5 A. Because the questions that were asked were
6 answered. You are taking memorandums out of context
7 over many, many years that demonstrates we continued,
8 as we should have, to work on product development to
9 satisfy our consuming public. There is nothing wrong
10 with that. In fact, that's a very responsible
11 effort.

12 Q. Nothing wrong with manipulating nicotine; right?

13 MR. DAVIS: Objection.

14 A. We are not --

15 MS. McDOLE: Objection to the form.

16 Q. Nothing wrong with manipulating nicotine; right?

17 MS. McDOLE: Objection, argumentative.

18 MR. DAVIS: He answered that several times,
19 Mr. O'Fallon.

20 A. There is a lot wrong with you continuing to use
21 the word "manipulate." I resent that greatly.

22 MR. O'FALLON: Why don't we take a break.

23 (Recess taken from 11:01 to 11:11 a.m.)

24 BY MR. O'FALLON:

25 Q. Dr. Horrigan -- I just gave you a Ph.D.

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1 A. I have one.

2 Q. Do you? Honorary?

3 A. Honorary.

4 Q. Mr. Horrigan, I'd like to turn next to the issue

5 of youth smoking. Do you recall that in 1983 the

6 whole issue of youth smoking became a real

7 public-relations problem for the tobacco industry?

8 A. I forgot what year it was, but I remember as

9 time progressed youth smoking became an issue.

10 Q. I'd like to show you a document that I'm going

11 to have marked as the next exhibit.

12 (Plaintiffs' Deposition Exhibit 4111 was

13 marked for identification.)

14 BY MR. O'FALLON:

15 Q. 4111 is a document Bates numbered 50390 7468.

16 Do you recall seeing this document?

17 A. I receive so many documents from the Tobacco

18 Institute I can't recall, but it's addressed to me so

19 obviously I received it.

20 Q. The date on this document is April 27, 1983;

21 correct?

22 A. That's what it says.

23 Q. And it's addressed to you as the chairman of the

24 board of R.J. Reynolds Tobacco Company; correct?

25 A. Yes.

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1 Q. It's from a Sam Chilcote?

2 A. Yes.

3 Q. He states that "Though we have been somewhat
4 successful in containing it, the teenage smoking
5 issue continues to pose serious negative legislative
6 and public-relations potential"; correct?

7 A. That's what he says.

8 Q. It said in fact, "Earlier this week the White
9 House Office of Drug Abuse Policy unveiled a program
10 aimed at encouraging youngsters not to experiment
11 with alcohol and drugs (the program materials are
12 attached)"; correct?

13 A. Yes.

14 Q. It stated that at the -- "At a press conference
15 called for the occasion, the first question asked by
16 reporters was why cigarettes were not involved. In
17 asking the question, the reporter called our product
18 'a gateway drug'"; correct?

19 A. Apparently.

20 Q. It says, "Dr. Carlton Turner, the program's
21 director, handled the question effectively. We were
22 pleasantly surprised to hear him refer specifically
23 to The Institute's advertisement 'Question 4 -- Do
24 cigarette companies want kids to smoke?' He then
25 went on to explain the tobacco use by youngsters has

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1 declined"; correct?

2 A. That's what it says.

3 Q. He then goes on, "Dr. Turner's program has the
4 personal attention and involvement of the First
5 Lady. It's potential to escalate the teenage smoking
6 issue is enormous"; correct?

7 A. That's what it says.

8 Q. It says, "As evidenced by some of the testimony
9 in favor of Congressman Waxman's labelling bill,
10 there are those in the Administration who view
11 tobacco as 'an addictive drug' and who plainly do not
12 believe our position against teenage smoking";
13 correct?

14 A. Yes.

15 Q. He then states, "I believe we must again
16 consider programs which underscore our position and
17 would help our friends in Congress and" in "the
18 administration prevent this issue from escalating";
19 correct?

20 A. That's correct.

21 Q. After this time did R.J. Reynolds in fact take
22 out another public statement campaign talking about
23 youth smoking?

24 A. I don't recall in the context of the timing of
25 this letter what happened, but I seem to recall that

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1 one of our ads addressed youth smoking.

2 Q. Let me hand you a document that's been
3 previously marked as Plaintiffs' Exhibit 1117. This
4 is a document Bates stamp numbered 50664 6981. Do
5 you recognize this document?

6 A. Yes, I do.

7 Q. Is this a statement that was run by R.J.
8 Reynolds?

9 A. I believe this was one of our public-issues
10 statements.

11 Q. And do you recall where this ran, or generally
12 the type of publications it ran in?

13 A. I don't recall the media schedule. I believe it
14 was in selected newspapers and certain magazines, but
15 I don't recall.

16 Q. Do you recall the approximate time period this
17 ran?

18 A. No, I really don't.

19 Q. Is it true that you have taken the stand that
20 R.J. Reynolds has not advertised to children?

21 A. You say "take a stand."

22 Q. Well made public statements that R.J. Reynolds
23 has not and does not advertise to children.

24 A. If I was ever asked that question, then and now,
25 I would say we never intended our advertising to be

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1 directed to children.

2 Q. And was it your understanding that R.J. Reynolds
3 did not direct advertising at children?

4 A. It was my understanding that we did not program
5 advertising to children.

6 Q. And is it your testimony that while you were at
7 the company you never saw any advertising or
8 marketing programs that were aimed at children?

9 A. That question is -- is not a fair question. I
10 will tell you that during the time I was with the
11 company we did not implement in the marketplace any
12 programs aimed at children.

13 Q. So you did have programs that were aimed at
14 children, but is it your testimony that they were not
15 implemented?

16 A. No. Implicit in your question is there might
17 have been something, other activities or
18 recommendations being made. I don't know if that's
19 the case, but I'm telling you that our advertising,
20 the selection of our models and placement of our
21 advertising was to appeal to what I call the adult
22 smoking population.

23 Q. Is it your testimony that during your time at
24 R.J. Reynolds, to the best of your knowledge,
25 advertising and promotion was never directed at the

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1 14-to-17-year-old market?

2 A. To the best of my knowledge, all of our
3 advertising and promotion was aimed at and designed
4 for the adult smoking population.

5 Q. Now as early as 1964, when you adopted the
6 cigarette advertising code, the industry basically
7 agreed that it would not aim its advertising at
8 youth; correct?

9 MS. McDOLE: Objection to the form.

10 A. I don't recall the code in 1964.

11 Q. I'd like you to go back to the testimony you
12 gave before the Senate that's been previously marked
13 as Exhibit 4108. Can we get that out of the pile?
14 Do you have in front of you Plaintiffs' Exhibit 4108?

15 A. Yes.

16 Q. This again is testimony that was given before
17 the Senate Committee on Labor and Human Resources
18 concerning and opposing rotating warning labels;
19 correct?

20 A. I believe that was the issue at the time.

21 Q. Some of the people who advocated the rotating
22 warning labels felt this would be a deterrent to
23 smoking among young people; correct?

24 A. I guess they believed that.

25 Q. And it was your opinion, as expressed to the

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1 committee, that they should not do it for this
2 reason; correct?

3 MS. McDOLE: Objection to the form.

4 MR. DAVIS: Objection.

5 MS. McDOLE: Not do what for what reason?

6 Q. Let's look on page 50662 3091. Do you see where
7 it's -- in the third paragraph?

8 A. Yes.

9 Q. You told the senate, quote, "We are aware that
10 there have been some efforts to build support for
11 this bill with claims that its provisions would serve
12 as a deterrent to smoking among young people and that
13 industry advertising and promotional practices are
14 intended to encourage youthful smoking"; correct?

15 A. That's what it says.

16 Q. You say, "Such charges are without foundation";
17 correct?

18 A. I went on to say that, yes.

19 Q. On the next page, 3092, you talk in the third
20 full paragraph about the cigarette advertising code;
21 correct?

22 A. Yes.

23 Q. You state to the senate that, quote, "In 1964,
24 we adopted a cigarette advertising code prohibiting
25 advertising, marketing and sampling directed at young

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1 people"; correct?

2 A. Yes.

3 Q. "Even though the administrative provisions are
4 no longer in effect, each company still adheres to
5 the principles of this code"; correct?

6 A. Yes.

7 Q. Then you state that "A summary of these
8 principles and a copy of our Cigarette Sampling Code
9 is being submitted with this document for the
10 record"; correct?

11 A. Yes.

12 Q. So it's your understanding that as of 1964 R.J.
13 Reynolds and the other cigarette manufacturers were
14 prohibited, through their own voluntary code, from
15 advertising to the underage market; correct?

16 MS. McDOLE: Objection to the form.

17 A. My understanding was that as early as 1964 the
18 cigarette industry was operating responsibly and was
19 guiding its marketing programs so they would not
20 attract young people.

21 Q. And it was your understanding that they were not
22 supposed to be directing their advertising at the
23 underage market; correct?

24 A. I guess I -- I thought I answered this question
25 before. I said that the industry was not directing

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1 its advertising and promotion to young people,
2 meaning young -- youth, whatever.

3 Q. And again, this advertising code was a voluntary
4 code undertaken by the public. It was the industry's
5 promise to the public that they would not advertise
6 to youth; correct?

7 MS. McDOLE: Objection to the form of the
8 question.

9 A. I don't recall the origin of the advertising
10 form or the form that it took.

11 Q. Would that be your general understanding of the
12 code, however?

13 MS. McDOLE: Objection to the form of the
14 question.

15 A. I said I don't remember the form it took.

16 Q. Would you agree that R.J. Reynolds should be
17 held responsible for any violations of that code,
18 such as directly advertising to the 14-to-17-year-old
19 market?

20 MR. DAVIS: Objection.

21 MS. McDOLE: Objection to the form.

22 A. I have said we did not direct our advertising
23 and promotion to youth smoking, and I said that our
24 company honored the agreements that were made within
25 the industry.

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1 Q. I'm going to show you a document that's been
2 previously marked as Plaintiffs' Exhibit 1035. It's
3 been marked previously.

4 Plaintiffs' Exhibit 1035 is a document Bates
5 stamp numbered 50142 1310 to 1335. Have you seen
6 this document previously?

7 A. No.

8 Q. The first page states, "Mr. C. A. Tucker,
9 Presentation to RJRI B of D - 9/30" of '74; correct?

10 A. It's a long time ago, yes.

11 Q. "Marketing plans"; correct?

12 A. That's what it says.

13 Q. This is only a few years before you joined the
14 company; isn't that true, sir?

15 MR. DAVIS: Objection.

16 MS. McDOLE: Objection to the form of the
17 question.

18 A. It predates my joining the company.

19 Q. And Mr. Tucker was the vice president of
20 marketing; isn't that true?

21 A. I don't recall what his title was then.

22 Q. Let's look on the next page. "1975 Marketing
23 Plans Presentation, Hilton Head, September 30, 1974"
24 is what's stated at the top; correct?

25 A. That's what it says.

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1 Q. Under chart 1 it states the objective in 1985
2 as, quote, "Our paramount marketing objective in 1975
3 and ensuing years is to reestablish RJR's share of
4 marketing growth in the domestic cigarette industry";
5 correct?

6 A. That's what it says.

7 Q. He then says, under "Opportunity Areas," quote,
8 "We will speak to four key opportunity areas to
9 accomplish this." They are: "Increase our young
10 adult franchise" as number one; correct?

11 A. That's what it says.

12 Q. Under that he says, "First, let's look at the
13 growing importance of the young adult in the
14 cigarette market. In 1960, this young adult market,
15 the 14-24 age group, represented 21% of the
16 population"; correct?

17 A. That's what this says.

18 Q. He says, "As seen by this chart, they will
19 represent 27% of the population in 1975"; correct?

20 A. That's what they say.

21 Q. He then says, "They represent tomorrow's
22 cigarette business"; correct?

23 A. Yes, that's what it says.

24 Q. He then says, "As this 14-24 age group matures,
25 they will account for a key share of the total

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1 cigarette volume -- for at least the next 25 years";
2 correct?
3 A. That's what it says.
4 Q. On the next page he goes on to state that "Both
5 Philip Morris and Brown & Williamson, and
6 particularly their fast growing major brands,
7 Marlboro and Kool, have shown unusual strength among
8 these younger smokers"; correct?
9 A. Yes.
10 Q. "In the 14-24 age category, Philip Morris has a
11 38% share and B&W has a 21% share"; correct?
12 A. That's what it says.
13 Q. It says, "Both companies have significantly
14 lower shares in the remaining age categories";
15 correct?
16 A. That's what it says.
17 Q. It says, "With strong young adult franchises and
18 high cigarette brand loyalties, this suggests
19 continued growth for Philip Morris and B&W as their
20 smokers mature"; correct?
21 A. That's what this says.
22 Q. It then goes on to state that, "In sharp
23 contrast, our company line shows a pattern of
24 relatively even strength among all age groups and
25 frequent in the 25 and older categories, where we

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1 exceed both competitors"; correct?

2 A. Yes.

3 Q. It says, "Our two major brands, Winston and
4 Salem, show comparative weakness against Marlboro and
5 Kool among these younger smokers. Winston is at 14%
6 of the 14-24 age group versus Marlboro at 33%";
7 correct?

8 A. That's what it says.

9 Q. "Salem is at 9% versus Kool at 17%"; correct?

10 A. Yes.

11 Q. He then concludes that "This suggests slow
12 market share erosion for us in the years to come
13 unless the situation is corrected"; right?

14 A. That's what he says.

15 Q. Thus, he is emphasizing the importance of this
16 14-to-24 market; correct?

17 MS. McDOLE: Objection to the form,
18 objection to the characterization.

19 (Interruption by the reporter.)

20 A. Restate that question.

21 Q. "Thus, he is emphasizing the importance of this
22 14 to 24 year old market; correct?"

23 A. I don't conclude that.

24 Q. Well let's look on the next page. He says,
25 "Thus our strategy becomes clear for our established

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1 brands: Direct advertising appeal to the younger
2 smokers while...being true to the brand's basic
3 product attributes...and...without alienating the
4 brand's current franchise"; correct?

5 A. Yes.

6 Q. So they are going to directly market and
7 advertise to the 14-to-24-year-old category.

8 MR. DAVIS: Objection.

9 MS. McDOLE: Objection to the form,
10 misstatement of the document.

11 A. I would not agree with your conclusion from
12 these charts or this presentation.

13 Q. You would not agree that this is showing that
14 RJR is directly marketing to the underage market?

15 A. No, I do not agree with that. We continued to
16 advertise to young adults. At that time I think it
17 was 18 and up. I think later on we said 21 and up.

18 Q. Well here it looks like you are going to
19 advertise at 14 to 17 year olds as well.

20 A. I don't --

21 MR. DAVIS: Objection.

22 A. You are not a marketing guy, Mr. Lawyer, and I
23 wasn't there in 1974, but I can tell you that there
24 was no intent to direct advertising to 14 year olds.

25 Q. Let's look at a document marked Plaintiffs'

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1 Exhibit 1036. This is a document Bates stamp
2 numbered 50079 6928 through 6934; correct?
3 A. Yes.
4 Q. This is entitled "R.J. REYNOLDS TOBACCO COMPANY
5 DOMESTIC OPERATING GOALS"; correct?
6 A. That's what it says.
7 Q. Under "MARKETING GOALS" it says, the "Primary
8 goal in 1975 and in ensuing years is to reestablish
9 RJR's share of growth in the domestic cigarette
10 industry"; correct?
11 A. That's what it says.
12 Q. "This will be done by the following:" One --
13 First bullet point, "Increase our Young Adult
14 Franchise"; correct?
15 A. Yes.
16 Q. It says, the 14 to 24 age group in 1960 was 21%
17 of the population; in 1970 will be 27%; right?
18 A. Yes.
19 Q. "As they mature" --
20 MS. McDOLLE: Objection to the misreading.
21 MR. O'FALLON: Twenty-seven percent.
22 MS. McDOLLE: The misreading.
23 MR. O'FALLON: What misreading?
24 MS. McDOLLE: You said "1970," I think it
25 says "1975."

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1 MR. O'FALLON: Okay. Let's go back.

2 BY MR. O'FALLON:

3 Q. The 14 to 24 age group in 1960 was 21% of
4 population; in 1975 will be 27%; correct?

5 A. That's what it says.

6 Q. It says, "As they mature, will account for key
7 share of cigarette volume for next 25 years";
8 correct?

9 A. That's what it says.

10 Q. "WINSTON has 14% of this franchise while
11 Marlboro as 33%"; correct?

12 A. That's what this says.

13 Q. "SALEM has 9% - Kool has 17%"; correct?

14 A. That's correct.

15 Q. It then says, quote, "We will direct advertising
16 appeal to this young adult group without alienating
17 the brand's current franchise"; correct?

18 A. That's what it says.

19 Q. And that young adult group is defined as 14 to
20 24 year olds; correct?

21 MS. McDOLLE: Objection to form.

22 MR. DAVIS: Objection.

23 Q. I'm sorry, your answer, sir?

24 A. Ask the question again.

25 Q. And that young adult group is defined as 14 to

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1 24 year olds; correct?

2 MR. DAVIS: Objection.

3 A. This memorandum refers to the 14-to-24-year-old
4 group that way. This -- Some of these questions I
5 feel obliged to answer in a broader sense so there is
6 some perspective on this. These are not Supreme
7 Court documents prepared by Supreme Court Judges, but
8 rather these are written by marketing people,
9 research people over the years. And when we talk
10 about your accusations about appealing to youth. I'd
11 like to put that in clearer focus. I feel compelled
12 to do that here at this time.

13 MR. O'FALLON: I'm going to move to strike
14 as nonresponsive.

15 A. The point is that --

16 Q. Sir, there is no question pending to you.

17 MR. DAVIS: He is answering your question.
18 Go ahead.

19 A. The point is that young people take up smoking
20 at whatever age they choose to smoke, and as they
21 mature and as they take up smoking they smoke the
22 brands that their peers smoke, so that anything we
23 ever did was to get at the young adult smoker, by our
24 definition 18 to 21 or on up or whatever --

25 Q. Well 14 to 24 based on these documents.

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1 MS. McDOLE: Objection to the interruption.

2 MR. DAVIS: You interrupted him. Keep
3 answering. Keep answering the question.

4 A. I am expanding this for the sake of people who
5 will only see this perhaps on tape and perhaps
6 selectively by the way you choose to take my
7 testimony, but I'm going to attempt to put this in
8 focus here.

9 So that people when they choose to smoke, they
10 smoke what is the hot brand, and therefore unless
11 Winston and Camel establish a franchise with adult,
12 young adult smokers, and that was the smoke of choice
13 by those people, when people 13, 15, 16 chose to
14 smoke, unless we had some presence in that area, then
15 we would be left out of the emerging smoking
16 population. That cannot be construed, nor should
17 ever be construed that we are advertising to
18 teenagers. So I just want to put this in focus
19 because of your, what I call, circuitous line of
20 questioning here this morning.

21 Q. So in other words you need presence in that
22 13-to-14-to-15-to-16-to-17-year-old area so that when
23 those people choose to smoke your item is on the
24 menu; correct?

25 MR. DAVIS: Object.

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1 MS. McDOLE: Objection to the form.

2 A. But I'll answer it in the devious way in which
3 you asked it. That is not what I said. We do not
4 direct our advertising at 13, 14 and 15 year olds, we
5 direct advertising at mature young adult people who
6 we hope will smoke our cigarettes so that when people
7 grow up to the age that they can make an informed
8 decision, that they hopefully will choose our brand.
9 There is a distinct difference there.

10 Q. So you hope that those kids under the age of 18
11 do at some point try your brands while they're out
12 there experimenting with smoking; right?

13 MR. DAVIS: Objection.

14 MS. McDOLE: Objection to the question.

15 A. You are putting words in my mouth and I refuse
16 to accept that. We do not try to do that, and that's
17 a blatant charge.

18 Q. And these documents would in fact demonstrate
19 and illustrate that in fact you did direct
20 advertising at the underage market in violation of
21 your own voluntary ad code; correct, sir?

22 (Interruption by the reporter.)

23 MR. DAVIS: Objection.

24 MS. McDOLE: Object to the form of the
25 question.

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1 A. These documents don't demonstrate that to me one
2 iota.

3 Q. Well let's review a few more. I'm going to show
4 you a document that's been marked as Plaintiffs'
5 Exhibit 1037, it's Bates stamped 50577 5577. This is
6 a document dated January 23rd of 1975. Again, this
7 is to a Mr. C. A. Tucker; correct?

8 A. That's correct.

9 Q. It's from a Mr. J. F. Hind; correct?

10 A. That's correct.

11 Q. It says, "Our attached" memorandum "to expand
12 nationally the successfully tested 'Meet the Turk' ad
13 campaign and new Marlboro-type blend is another step
14 to meet our marketing objective: To increase our
15 young adult franchise"; correct?

16 MS. McDOLLE: Objection, misread.

17 MR. O'FALLON: I'll read it again.

18 Q. It states, quote, "Our attached recommendation
19 to expand nationally the successfully tested 'Meet
20 the Turk' ad campaign and new Marlboro-type blend is
21 another step to meet our marketing objective: To
22 increase our young adult franchise"; correct?

23 A. That's what it says.

24 Q. It says, "to ensure increased and longer-term
25 growth for CAMEL FILTER, the brand must increase its

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1 share of penetration among the 14-24 age group which
2 have a new set of more liberal values and which
3 represent tomorrow's cigarette business"; correct?

4 A. That's what this says.

5 Q. And apparently -- And do you know that that Meet
6 the Turk ad campaign was in fact instituted?

7 A. I never heard of the Meet the Turk ad campaign.

8 Q. And apparently, assuming it was instituted, it
9 was aimed at this 14 to 24 age group, wasn't it, sir?

10 MS. McDOLLE: Objection to both
11 assumptions.

12 MR. DAVIS: Objection.

13 A. I cannot answer the question. I was not there.

14 I do not understand the memorandum.

15 (Discussion off the stenographic record.)

16 Q. You would also agree that R.J. Reynolds
17 continued to study this underage market; correct?

18 A. I don't agree we continued to study it.

19 Q. I'm going to show you a document that's been
20 previously marked as Plaintiffs' Exhibit 1123. This
21 is a document dated October 31st of 1977; correct?

22 A. Yes.

23 Q. It's to a Mr. T. L. Ogburn; correct?

24 A. That's correct.

25 Q. And it's from a Jeffrey F. Durgie, if you will

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1 look on the third page of the document.

2 A. Yes.

3 Q. And just so the record's clear, this is a
4 document that's Bates stamp numbered 50138 0878
5 through 0889. Do you know who Mr. Durgee was at this
6 point in time?

7 A. No.

8 Q. Do you know who Mr. Ogburn was at this point in
9 time?

10 A. He was in market research; I don't know what his
11 title was.

12 Q. Part of what they are looking at, as illustrated
13 by the first page of the document, are younger
14 smokers; correct?

15 A. That's not what I see.

16 Q. Well do you see where it's --

17 A. You keep using the word "younger smokers" and I
18 see share of smokers by age group.

19 Q. Okay. Why don't you look under the first
20 subheading. Do you see where it says "younger
21 smokers" underlined, sir?

22 A. I see it underlined, but I'm looking ahead of
23 you and I see age 35 and I see 18 and over so I don't
24 focus as dramatically or as single-mindedly as you do
25 on the 14 year old.

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1 Q. Only advertisements to the 14 year olds violate
2 your code. That's why I'm going to focus in on
3 this.

4 Younger smokers, he says, perhaps because of
5 their high susceptibility to fads, peer pressure,
6 etcetera, younger smokers show frequent, short-term
7 changes from one brand to another; correct?

8 A. Excuse me. You started this line of questioning
9 by saying you're trying to establish our
10 advertisement to the young people. Therefore, now
11 you're going to read this memorandum, so I don't draw
12 a link between what you just said and this
13 memorandum. I have a problem with that.

14 Q. Why don't you just answer my question, sir?

15 A. No. I'm listening to what you are saying.

16 Q. Well here's my question.

17 A. Start out with your statement, because that's a
18 lead in to a question and I think it's important for
19 me to have the whole thing here. I can't answer this
20 unless we take it apart.

21 Q. I'm going to restate my question.

22 A. No, restate everything, because you started
23 talking about advertising to young people.

24 Q. Sir, I'm the one who asks the questions at the
25 deposition; okay?

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1 A. Okay. Fine.

2 Q. If your lawyers have an objection, they can make
3 one; otherwise, I'd ask you --

4 A. They are not objecting so far. I'm just telling
5 you to put it in focus.

6 Q. Sir, would you do me the courtesy of simply
7 listening to my questions and answering them?

8 A. Be happy to.

9 Q. Good.

10 Now once again, this is a study, in part, of the
11 underage market, is it not?

12 MS. McDOLE: Objection to the form of the
13 question, mischaracterization of the document.

14 A. This is a study of smokers by age group.

15 Q. Including the underage market; correct, sir?

16 A. It shows the categories by -- by category, and
17 they refer to younger smokers.

18 Q. And those younger smokers are defined as 14 to
19 18 year olds; correct?

20 A. They refer to them as 14 to 18 year olds in this
21 memorandum.

22 Q. And at least as to those under the age of 18,
23 those would be underage smokers; correct, sir?

24 A. Yes.

25 Q. That is, people who in most states are not

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1 legally entitled to buy cigarettes; correct, sir?

2 A. That's correct.

3 Q. And people who you're not supposed to advertise
4 to, as stated in your voluntary advertising code and
5 as stated in other documents and other public
6 statements; correct, sir?

7 A. That is correct.

8 Q. Let's go down and find out what they knew about
9 younger smokers when they looked at Winston versus
10 Marlboro. It's stated that, "As a group, younger
11 smokers probably emulate the smoking habits of
12 smokers in the next oldest group, 18-24 year olds,
13 since trends for younger smokers tend to follow (by
14 2-3 years) trends for the latter group"; correct?

15 A. That's what it says.

16 Q. Thus you will note, R.J. Reynolds would have
17 known at this time that even if they limited their ad
18 campaigns to 18 year olds, in all likelihood it's
19 going to have an impact on underage smokers because
20 those underage smokers will emulate the 18 to 24 year
21 olds; correct?

22 MR. DAVIS: Objection.

23 MS. McDOLE: Objection.

24 A. That's not a question, that's a statement.

25 Q. Is that the only response you would like to make

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1 at this time to my question?

2 A. That is not a question, that's a statement. You
3 are making -- drawing a conclusion and asking me to
4 agree to that, and I'm not agreeing to that.

5 Q. Or you can disagree with it. Are you
6 disagreeing with it?

7 A. I'm disagreeing with it.

8 Q. Then why don't you do that.

9 MR. DAVIS: Don't lecture.

10 MS. McDOLLE: Objection to the comment.

11 Q. I'm finally going to show you a document
12 previously marked as Plaintiffs' Exhibit 1121. This
13 is a document Bates stamp numbered 50845 3894, dated
14 July 22 of 1980; correct?

15 A. Yes.

16 Q. This is a memorandum to you, isn't it, sir?

17 A. That's right.

18 Q. It's from Mr. Long; correct?

19 A. That's correct.

20 Q. Who is Mr. Long at that time?

21 A. Executive vice president of marketing.

22 Q. And this is --

23 The subject matter is the "MDD Report on Teenage
24 Smokers 14 to 17"; correct?

25 A. Apparently, yes.

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1 Q. And he states that "Attached is a MDD report
2 covering the aforementioned subject. Last January, a
3 report was issued on this subject that indicated that
4 Philip Morris had a total share of 59 among 14-17
5 year old smokers, and specifically, Marlboro had a 52
6 share"; correct?

7 A. That's what this says.

8 Q. The "latest report indicates that Philip Morris'
9 corporate share has increased by about four points;
10 however, Marlboro remains the same at 52"; correct?

11 A. That's what it says.

12 Q. He then goes on to state, "Importantly, the
13 report further indicates that RJR continues to
14 gradually decline, and between the spring and fall of
15 1979 periods RJR's total share declined from 21.3 to
16 19.9"; correct?

17 A. That's what it says.

18 Q. And he is talking about the share of RJR smokers
19 in the teenage years, the 14 to 17 year olds;
20 correct?

21 A. If he is referring to the preceding paragraph,
22 probably is.

23 Q. Then he says, "Hopefully, our various planned
24 activities that will be implemented this fall will
25 aid in some way in reducing or correcting these

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1 trends"; correct?

2 A. That's what he said.

3 Q. In other words, your advertising and marketing
4 is going to be aimed at specifically reducing these
5 trends or, put another way, increasing your share in
6 the underage market; correct?

7 MR. DAVIS: Objection.

8 MS. McDOLE: Objection to the form of the
9 question, to the compound nature of it.

10 A. The -- Can I see the report, please, that you're
11 -- that he is referring to here? Because if I'm
12 going to answer your questions, I need to see that
13 report so I can --

14 Q. I don't have it with me, sir.

15 A. Well you must have it. Otherwise, it's very
16 difficult to answer a question about this.

17 Q. I didn't bring it with me, sir.

18 A. Okay.

19 Q. If your counsel wants to get it, I'm sure they
20 can.

21 A. Well it's regrettable that we don't have that
22 complete document here so I can answer your questions
23 more forthrightly. I know what he is saying and I
24 know what we intended to do.

25 Q. Well it appears that you intended to market

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1 directly to the underage market, doesn't it, sir?

2 MR. DAVIS: Object -- Objection.

3 MS. McDOLE: Objection to the form of the
4 question.

5 A. Having heard from my attorney, I will tell you
6 that I disagree with your accusation 100 percent.

7 MR. O'FALLON: I'm going to have the court
8 reporter mark another document.

9 (Plaintiffs' Deposition Exhibit 4112 was
10 marked for identification.)

11 BY MR. O'FALLON:

12 Q. Plaintiffs' Exhibit 4112 is a document Bates
13 stamp numbered 50845 4584 through 4588. Have you
14 seen this document previously?

15 A. I don't remember it.

16 Q. Are you familiar with the firm of Rogers &
17 Cowan, a public relations firm?

18 A. Yes, I am.

19 Q. This is apparently directed to a Laurene
20 Wassong. Do you recall who that is?

21 MS. McDOLE: I think it's Laurence.

22 MR. O'FALLON: Oh, I'm sorry. I misread
23 it. It's Laurence M. Wassong.

24 THE WITNESS: She's a he.

25 MR. O'FALLON: Okay. I just misread it.

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1 THE WITNESS: Yeah, it's Mr. Wassong. Yes,
2 I'm very familiar with Larry Wassong.
3 Q. And who is that?
4 A. He was a senior agency executive responsible for
5 some of our Reynolds advertising.
6 Q. And this is an activity report for R.J.
7 Reynolds; correct?
8 A. That's correct.
9 Q. And what this outlines is the number of motion
10 picture films that RJR products have been placed in;
11 correct?
12 A. That RJR products were used in.
13 Q. Correct. Well they are placed by your public
14 relations firm, aren't they?
15 A. They were chosen by the people in the movies to
16 smoke.
17 Q. Let's look at it. Under motion picture, "Never
18 Say Never Again," starring Sean Connery. "Never Say
19 Never Again," was that a James Bond film?
20 A. I believe so.
21 Q. Okay. It says, Production is now under way in
22 London on this new James Bond film -- feature
23 starring Sean Connery; correct?
24 A. That's what it says.
25 Q. It says, "Rogers & Cowan, on behalf of your

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1 clients, R.J. Reynolds, has paid \$10,000 promotional
2 fees to Woodcote Productions to establish R.J.
3 Reynolds products as the only tobacco products in the
4 picture and for the use of a Salem 'Spirit' billboard
5 in a key action set"; correct?

6 A. Yes.

7 Q. This wasn't just voluntary. You paid these
8 people to put your products in their motion picture
9 films; correct?

10 A. In this instance, that's correct.

11 Q. And what this is going to document throughout
12 here is similar instances when you're paying to have
13 your products used in motion pictures; correct?

14 MS. McDOLE: Objection. The document
15 doesn't say that.

16 A. This does not -- I'd have to read the entire
17 document to have you conclude that throughout we paid
18 for every single placement.

19 Q. Well let's look on page 50845 --

20 A. There is four pages in between, but if that's
21 what you want to do, we can skip them if that's what
22 you choose to do.

23 Q. The jury can read the document and make their
24 own conclusion.

25 A. Fine, you are taking me ahead.

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1 Q. I'd like to direct your attention to the last
2 page of the document, Bates number 4588. Are you
3 with me?

4 A. Yes.

5 Q. Look at the top where it talks about a film
6 called "Video Madness." Do you see that?

7 A. Yes.

8 Q. "This story of the latest craze for video
9 machines shows high school kids and young adults
10 competing for top player awards"; correct?

11 A. Yes.

12 Q. "The film is directed toward the youth market
13 and will be released during the summer of 1983";
14 correct?

15 A. Yes.

16 Q. "Smoking scenes involving young adults will
17 feature R.J. Reynolds products"; correct?

18 A. That's what it says.

19 Q. To the best of your knowledge, did R.J. Reynolds
20 ever call Rowans and Cowan up and say don't do that
21 because you're going at the youth market?

22 MR. DAVIS: Objection.

23 MS. McDOLE: Objection to the form.

24 A. I don't recall that, but I recall that the
25 reason we have this liaison was to approve the choice

1 of the films, the format and so on and if that
2 indeed, if that indeed ever happened, people can make
3 mistakes or err, and if that's what happened here,
4 that's obviously what happened. But we were
5 monitoring film content so that our products were
6 presented in a proper way.

7 Q. Would you agree that the documents we have now
8 looked at that show RJR marketing directly to the
9 underage market were in fact errors on RJR's part?

10 MR. DAVIS: Objection.

11 MS. McDOLE: Objection to the form,
12 objection to the mischaracterization of documents.

13 A. You have chosen my words in the context of this
14 last communication to apply to all of our previous
15 questions on youth advertising, and I cannot agree to
16 everything you have just said.

17 MR. O'FALLON: Why don't we take a lunch
18 break and be back at, say, quarter to one.

19 THE REPORTER: Off the record.

20 (Luncheon recess taken at approximately
21 11:49 p.m.)

22

23

24

25

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1 A F T E R N O O N S E S S I O N

2 (Deposition reconvened at approximately
3 12:45 p.m.)

4 BY MR. O'FALLON:

5 Q. Sir, when we took a break we were talking
6 generally about the subject of youth.

7 Do you recall that RJR did any research on the
8 reasons why people first begin to smoke?

9 A. No. If it existed, I don't remember it.

10 Q. Did you have any research that you can recall on
11 why people selected a first usual brand of
12 cigarettes?

13 A. I don't recall reports or analyses on that.

14 Q. I want to show you a document that's been
15 previously marked as Plaintiffs' Exhibit 1030.
16 Plaintiffs' Exhibit 1030 is a document Bates numbered
17 501221308 through 1317. Have you ever seen this
18 document?

19 A. No.

20 Q. This is a document from a gentleman named Mr.
21 Treddenick. Are you familiar with Mr. Treddenick?

22 A. I'll look at the spelling because it doesn't
23 ring a bell. Is his name in here anywhere?

24 Q. Yeah, it's at page 1313.

25 A. No, I don't remember that name.

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1 Q. Okay. The title of this memorandum, or the
2 purpose, it's stated, The purpose of this memorandum
3 is to answer the question what causes smokers to
4 select their first usual brand of cigarette; correct?

5 A. That's what seems to be the subject, yes.

6 Q. Okay. Under the introduction it says that "The
7 discussion which follows will cover the age at which
8 people generally start smoking, their initial reasons
9 for smoking, the brands they initially select for
10 regular use and their first reasons for selecting
11 that brand"; correct?

12 A. Yes.

13 Q. It says, "For legal reasons, we have been unable
14 to directly survey smokers under 18 years of age (as
15 will be shown most smokers begin smoking regularly
16 and select a usual brand at or before the age of
17 18.)" Do you see that?

18 A. Yes, I do.

19 Q. Was that your understanding when you were with
20 R.J. Reynolds, that people generally start to smoke
21 before they are 18 and in fact choose a first usual
22 brand before the age of 18?

23 A. Well certainly had I never joined the tobacco
24 industry I was well aware of the fact that many
25 people take up smoking at a much earlier age, and I

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1 don't know what drives their brand choices but it was
2 just common knowledge that young people start smoking
3 sooner than 18.

4 Q. Under "STARTING AGE" he then cites some
5 statistics that he apparently has obtained from the
6 Department of Health, Education and Welfare; correct?

7 A. I can't see the -- Oh, I see now the source,
8 yes. Okay. Fine.

9 Q. And these indicate that, for men at least, the
10 majority, 54 percent, start smoking at age 17 and
11 under; correct?

12 A. That's what this chart would seem to show.

13 Q. On the next page, there is a section entitled,
14 up at the top, kind of the second subsection, states
15 the -- the initial reasons for smoking; correct?

16 A. Right.

17 Q. And he indicates that public sources are
18 consistent in identifying one or more of the
19 following as the essential reasons for smoking
20 cigarettes at least initially; correct?

21 MS. McDOLE: I think the word is
22 "published."

23 MR. O'FALLON: Published. What did I say?

24 MS. McDOLE: Public.

25 MR. O'FALLON: Not reading well this

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1 afternoon.

2 Q. Let me go back. He states, "Published sources
3 are consistent in identifying one or more of the
4 following as the essential reasons for smoking
5 cigarettes, at least initially"; correct?

6 A. That's what it says.

7 Q. And he lists there conformance, support,
8 enjoyment, taste or other physiological benefits and,
9 show off; correct?

10 A. That's what he said the report showed.

11 Q. Under "Conformance" he states that "Probably the
12 most prevalent reason that a young person starts to
13 smoke is the influence of a close friend or 'peers'";
14 correct?

15 A. That's correct.

16 Q. He then goes on to state that "Peer group
17 influence is very strong during the teen years";
18 right?

19 A. Where does that say that?

20 Q. I skipped one sentence. It's the next
21 sentence.

22 A. That's what it says.

23 Q. It says, "Peer group influence is very strong
24 during the teen years." He then goes on to state,
25 "Men, particularly, report that smoking is symbolic

1 of rugged masculinity and that they took up smoking
2 because they wanted to impress and be accepted by
3 other young men who smoked"; correct?

4 A. That's what it says.

5 Q. It says, "Often the motivation is to be less the
6 target of group aggression"; correct?

7 A. That's what it says.

8 Q. And then it says, "Smoking is often a way to
9 gain entree to a group by affecting an appearance of
10 being mature, sophisticated, sexy or manly"; correct?

11 A. That's what it says.

12 Q. Was that your general understanding of why
13 people started to smoke when you were with R.J.
14 Reynolds?

15 A. That was my general understanding of why they
16 chose to smoke before -- before I ever joined
17 Reynolds.

18 Q. Okay. Let's look at page, last three Bates
19 numbers, 1312. Here they are talking about "REASONS
20 FOR SELECTING A FIRST 'USUAL' BRAND"; correct?

21 A. Yes.

22 Q. It says, "We have focused earlier on the age
23 people begin to smoke, their initial reasons for
24 smoking and the brands they first select because that
25 information helps us draw reasonable hypotheses in

1 the absence of direct data regarding reasons for
2 initial brand selection"; correct?

3 A. That's what it says.

4 Q. It says, "Broadly speaking, we hypothesize that
5 the causes for initial brand selection relate
6 directly to the reasons a young person smokes";
7 correct?

8 A. That's what it says.

9 Q. "The more closely a brand meets the
10 psychological 'support' needs (advertising or
11 otherwise communicated brand or user image) and the
12 physiological needs (product characteristics), the
13 more likely it is a given brand will be selected";
14 correct?

15 A. That's what it says.

16 Q. Thus there appears to be an interaction between
17 why a person smokes at all and what brand they
18 choose; correct?

19 MS. McDOLLE: Objection to the form of the
20 question.

21 A. Repeat that question.

22 Q. Sure. I said, "Thus there appears to be an
23 interaction between why a person smokes at all and
24 what brand they choose; correct?"

25 A. I guess I separate the two. I think first of

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1 all you make a decision to smoke, then the second is,
2 which brand do you choose to smoke. I guess maybe
3 I'm not understanding your question but I don't see a
4 direct relationship between the two.

5 Q. Mr. Tredennick seems to be indicating that those
6 two interact, interactive; that is, you know, that
7 you may choose to smoke to be cool, you may pick a
8 cigarette to be cool, you may choose to smoke
9 cigarette to be choose a certain cigarette to be
10 cool; correct?

11 A. I can't speak for Mr. Tredennick.

12 Q. But that's what this researcher at R.J. Reynolds
13 seems to be indicating; correct?

14 MS. McDOLLE: Objection to the form of the
15 question, to the assumption.

16 A. I'm just reading what he has said. I don't -- I
17 can't say I agree or disagree with what he is saying
18 here.

19 Q. Let's look on page 1313. Again up at the top,
20 the first sentence under "REASONS FOR SELECTING A
21 FIRST 'USUAL' BRAND (Cont'd)"?

22 A. Right.

23 Q. He states, "It is true that smokers will say 'a
24 friend's influence' or 'I liked that taste' (or both)
25 when asked to recall why he selected his first

1 regular brand rather than some other brand." He then
2 goes on to say, "But it must also be true that
3 influential young smokers (perhaps relatively few)
4 have made brand selections based on product
5 characteristics or advertising and promotion
6 communication"; correct?

7 A. That's what he says.

8 Q. So in other words, he is saying that the
9 advertising and marketing influence young smokers;
10 correct?

11 A. That's what he said.

12 MS. McDOLE: Object to the form of the
13 question.

14 MR. DAVIS: Objection.

15 Q. Let's look at his summary, the last paragraph
16 under "SUMMARY" at the bottom of the page.

17 He states that the main causes -- sorry about
18 that. He states that "The main causes of initial
19 brand selection; i.e., the influence of friends, the
20 user image a brand projects and differentiated
21 product characteristics are logically related to the
22 reasons a young person begins to smoke"; correct?

23 A. That's what he concluded.

24 Q. So again R.J. Reynolds in 1974 at least one of
25 the market researchers was saying that this notion of

1 advertising and why a person smokes all interacts
2 with also which brand they choose; correct?

3 MR. DAVIS: Objection.

4 MS. McDOLE: Objection, objection to the
5 form of the question.

6 A. This document, to me, says that he's hit upon
7 the influence of friends, the image of a brand and
8 later on, finally, his own reaction to a product when
9 he tries it as to what he chooses to smoke. That's
10 all I read from this. That's all I conclude from
11 this report.

12 Q. The whole issue of the young adult market, and
13 in particular the first-usual-brands young adult
14 smoker became very important while you were a CEO at
15 R.J. Reynolds; correct?

16 MS. McDOLE: Objection to the form.

17 A. The issue of youth smoking as posed by the artis
18 became a question, but I guess you will have to
19 repeat the question if I'm not answering it
20 correctly.

21 Q. I said, "The whole issue of the young adult
22 market and in particular the first-usual-brand young
23 adult smoker became very important to R.J. Reynolds
24 while you were a CEO at R.J. Reynolds; correct?"

25 MS. McDOLE: Objection.

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1 A. That's not correct.

2 Q. Isn't it true that the first-usual-brand young
3 adult smokers and young smokers in general are the
4 only source of R.J. Reynolds' replacement smokers?

5 MS. McDOLE: Objection to the form.

6 A. That is not completely true. There is brand
7 switching.

8 Q. But isn't it true it's much harder to attract
9 somebody and make them switch brands than it is, for
10 instance, to attract first-usual-brand users in the
11 first instance?

12 MS. McDOLE: Objection to the form.

13 A. Your line of questioning is trying to take me
14 down a road here which I don't want to travel because
15 there is brand switching, and then finally when a
16 person makes an informed decision, whether it's
17 drinking or smoking, then he would choose the brand
18 he wishes to smoke or drink and we'd like to be that
19 brand.

20 Q. But most people --

21 A. But not to appeal to them in their so-called
22 gestation period. That's ludicrous.

23 Q. But as Mr. Tredennick said in 1974, most smokers
24 began smoking regularly and select a usual brand at
25 or before the age of 18; right?

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1 A. And they can do whatever they want at or before
2 the age of 18 and you are not going to stop it and
3 I'm not going to stop it.

4 Q. But my point is that you'd much rather, you,
5 R.J. Reynolds, would much rather have them choose
6 your cigarette as their first usual brand; correct?

7 MR. DAVIS: Objection.

8 A. No, that's not correct. The way you are stating
9 your question, that is not correct, because you are
10 implying again we are getting young people to smoke,
11 which is ludicrous.

12 Q. It's your testimony --

13 A. Now let me -- pardon me. I think this is very
14 -- this is obviously at the heart of all of these
15 lawsuits, all these things they are accusing this
16 industry of. We want and would always want in my
17 time there to capture what I call the adult smoker,
18 the young adult smoker, so they smoke Camel or
19 Winston or Salem rather than Marlboro or Newport, so
20 that when people do reach the age of decision making,
21 the proper age, that if they look around and see
22 people smoking Winston or Camel and they choose to
23 smoke, I'd rather have them choose Winston or Camel
24 and not Marlboro. That was the objective of all our
25 advertising and promotion, very simple.

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1 Q. At the time you had that objective, you knew the
2 vast majority of all people chose their first usual
3 brand before they ever turned legal age; correct?

4 MR. DAVIS: Objection.

5 MS. McDOLE: Objection to the form.

6 A. We knew that people smoked at a much earlier age
7 and we didn't draw any parallel between that and what
8 I'm just telling you. I don't -- That's specious.

9 Q. The fact of the matter is, R.J. Reynolds wanted
10 to attract first-usual-brand young adult smokers;
11 correct?

12 MS. McDOLE: Objection.

13 MR. DAVIS: Objection.

14 MS. McDOLE: Asked and answered.

15 A. That is not a correct way of talking about our
16 marketing strategy. Maybe a lawyer's way, it's not a
17 marketer's way.

18 Q. Let's see what R.J. Reynolds said about that.

19 I'm going to hand you a document that's been
20 previously marked as Plaintiffs' Exhibit 1031.

21 Plaintiffs' Exhibit 1031 is a document Bates numbered
22 50192 8462 through 8550; correct?

23 A. I guess so.

24 Q. It's a document entitled "YOUNGER ADULT SMOKERS
25 STRATEGIES AND OPPORTUNITIES"; correct?

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- 1 A. Yes.
- 2 Q. It's from Diane Burrows; correct?
- 3 A. Yes.
- 4 Q. To Mr. Long, Orlowsky, Lees and numerous other
- 5 individuals; correct?
- 6 A. That's what the cover sheet shows.
- 7 Q. It's a Strategic Research Report published by
- 8 the marketing development department of the R.J.
- 9 Reynolds Tobacco Company in February of 1984;
- 10 correct?
- 11 A. That's what it says.
- 12 Q. This is during a time when you were chairman of
- 13 the company; correct?
- 14 A. Correct.
- 15 Q. Let's look at page small I. It's the fourth
- 16 page in. Do you see at the top it's entitled
- 17 "YOUNGER ADULT SMOKERS: STRATEGIES AND
- 18 OPPORTUNITIES, MANAGEMENT SUMMARY"? Do you see that?
- 19 A. I see it.
- 20 Q. Do you see the sentence, the paragraphs under
- 21 the title, quote, "THE IMPORTANCE OF YOUNGER ADULT
- 22 SMOKERS"?
- 23 A. Yes.
- 24 Q. It states, "Younger adult smokers have been the
- 25 critical factor in the growth and decline of every

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1 major brand and company over the last 50 years";
2 correct?
3 A. That's what it says.
4 Q. "They will continue to be just as important for
5 brands/companies in the future for two simple
6 reasons"; correct?
7 A. That's what it says.
8 Q. First bullet point: "The renewal of the market
9 stems almost entirely from 18-year-old smokers. No
10 more than 5% of smokers start after age 24"; correct?
11 A. That's what it says.
12 Q. It says, "The brand loyalty of 18-year-old
13 smokers far outweighs any tendency to switch with
14 age"; correct?
15 A. That's what it says.
16 Q. It says, "Thus, the annual influx of 18-year-old
17 smokers provides an effortless momentum to successful
18 'first brands'"; correct?
19 A. That's correct.
20 Q. And she defines it below as "those which appeal
21 to 18-year-old smokers rather than switchers ages
22 19-24"; correct?
23 A. Where do you see that?
24 Q. Do you see it's a star, a footnote, and then
25 there is a footnote down at the bottom?

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1 A. Okay.

2 Q. Okay. However, we know based on the previous
3 document that if you are talking about first usual
4 brands you are also, by necessity talking about
5 people under the age of 18; correct?

6 MS. McDOLE: Objection to the form of the
7 question.

8 A. That's not correct in my understanding of it.

9 Q. She then goes on to say that "Marlboro grows by
10 about .8 share points per year due to 18-year-old
11 smokers alone"; correct?

12 A. That's what it says.

13 Q. And those are smokers that simply age into that
14 market; correct? They are 17-year-old smokers that
15 turn 18; right?

16 A. I guess 18 follows 17.

17 Q. And a share point in terms of profit is worth
18 about how much money, sir?

19 A. I don't remember anymore.

20 Q. Would it be consistent with what you do recall
21 that a share point is worth about \$120 million in
22 gross profits?

23 MS. McDOLE: Objection to the form.

24 A. I said I don't remember. That's your number,
25 it's yours, it's not mine, and I'm not going to

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1 affirm or deny the number.

2 Q. Well it was a number given to me by Mr.

3 Schindler, who is the current CEO of RJR. Would you

4 disagree with his number?

5 MR. DAVIS: Objection.

6 MS. McDOLLE: Objection to the form.

7 A. I'm not saying I disagree with his number. I'm

8 telling you from my recollection, remembering how I'm

9 68 years old, Mr. Schindler's in his 50s, is the

10 current CEO, I've been out of there nine years, I

11 don't remember what the numbers are anymore.

12 Q. She then goes on to state, "On the other hand,

13 brands/companies which fail to attract their share of

14 younger adult smokers face an uphill battle";

15 correct?

16 A. Let me read it again, please.

17 Q. Sure.

18 A. Yes, that's what it says.

19 Q. She said, we are not attracting --

20 Then she says, "They must achieve net switching

21 gains every year to merely hold share"; correct?

22 A. That's what it says.

23 Q. By not attracting its fair share of 18-year-old

24 smokers, RJR yielded a .5 point ingoing share

25 advantage to Philip Morris in 1983; correct?

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- 1 A. That's what this memorandum states.
- 2 Q. She then states that "Marlboro and Newport, the
3 only true younger adult growth brands in the market,
4 have no need for switching gains"; correct?
- 5 A. That's what it says.
- 6 Q. "All of their volume growth can be traced to the
7 younger adult smokers and the movement of
8 18-year-olds which they have previously attracted
9 into older age brackets, where they pay a consumption
10 dividend of up to 30%"; correct?
- 11 A. That's what it says.
- 12 Q. Let's go to page 2 of the report, says at the
13 bottom 2. The Bates number's cut off.
- 14 A. This page 2 or --
- 15 Q. Yeah, page 2, after the -- I think you're in the
16 Roman numerals now, then it gets into the arabic
17 numbers.
- 18 A. Okay.
- 19 Q. Actually, if you look at the page in front of
20 that, it gives the title of the section and the
21 section title is "THE IMPORTANCE OF YOUNGER ADULT
22 SMOKERS"; correct?
- 23 A. Yes.
- 24 Q. First she talks about volume. She says,
25 "Younger adult smokers are the only source of

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1 replacement smokers"; correct?

2 A. That's what it says.

3 Q. And you knew as an executive of R.J. Reynolds
4 that every year you had to replace smokers; correct?

5 MS. McDOLE: Objection to the form of the
6 question.

7 A. We didn't know that we had to replace smokers.
8 We were trying to grow our share within the smoking
9 population.

10 Q. But every year you know that people were leaving
11 the marketplace, were either quitting or dying;
12 right?

13 MS. McDOLE: Objection to the form.

14 A. If that's what was happening with the smoking
15 population, that could be the case.

16 Q. And in order to maintain your share, you had to
17 attract these new smokers that were coming in;
18 correct?

19 A. That is not correct. You had to broaden your
20 base of the smoking population however it was
21 constituted.

22 Q. And part of that would include attracting new
23 smokers; correct?

24 A. Part of it would attract people who were making
25 the choice, the choice to smoke.

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1 Q. The choice that, as your own marketing
2 department indicated some 10 years earlier, is very
3 intertwined with what they choose to smoke; correct?

4 MR. DAVIS: Objection.

5 MS. McDOLE: Objection to the form.

6 A. I'm talking about choice as it relates to the
7 decision of whether to smoke or not smoke, and when
8 they make the choice to smoke at the adult age, we
9 would hope one of our brands would appeal to them.

10 Q. You knew most of them would make their choices
11 on what brands to smoke well before they reached
12 adult age?

13 MR. DAVIS: Objection.

14 MS. McDOLE: Object to the form of the
15 question.

16 A. It has no bearing on the line of conversation we
17 are having here or interrogation we are having.

18 Q. Anyhow, what she is indicating is the young
19 adult smokers is the only source of replacement
20 smokers; correct?

21 A. This is what this person is saying.

22 Q. She is a researcher for R.J. Reynolds; correct?

23 A. Probably.

24 Q. It says, "Less than one-third of smokers (31%)
25 start after age 18"; correct?

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1 A. I don't know. I guess if she says it that could
2 be the case.

3 Q. Well usually in RJR, did you do careful
4 research?

5 MS. McDOLLE: Objection to the overbreadth
6 of the question.

7 (Interruption by the reporter.)

8 A. I'm not impugning the integrity of this report.
9 I'm saying based upon this report, this is what she
10 said, and I'm agreeing with you this is what she's
11 published and if that's the case, then it's here.
12 That's it.

13 Q. She then talks in number 2 about "MARKET SHARE
14 -- THE 'FIRST BRAND' ADVANTAGE," correct, and she --
15 do you see under number 2?

16 A. That's a heading, yes.

17 Q. Then it says A, "ANNUAL GAINS FROM THE," quote
18 unquote, "'NEW' MARKET"; correct?

19 A. Yes, that's what it says.

20 Q. It says, "The 18-year-old smokers in the 1983
21 market were worth about 1.6 share of total smokers";
22 correct?

23 A. That's what it says.

24 Q. "By capturing half of these 18-year-old smokers,
25 Marlboro gained .8 points of total smokers without

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1 needing to attract a single brand switcher"; correct?

2 A. That's what it says.

3 Q. She then states that "This gain was the

4 equivalent of a successful two-style new brand

5 introduction, with no cannibalization and no

6 development/introductory costs"; right?

7 A. That's the comparison she's drawing.

8 Q. Let's look on page 4, last four Bates numbers

9 8473. She talks under D about "LONG-TERM DIVIDENDS

10 -- RATE PER DAY." She says, the "Government and RJR

11 studies spanning several decades have shown that

12 smokers increase their consumption as they age";

13 correct?

14 A. I'm sorry. Where is that now?

15 Q. Do you see in the "LONG-TERM DIVIDENDS -- RATE

16 PER DAY"?

17 A. You've read this before, I'm seeing it for the

18 first time, so you will have to bear with my speed

19 here.

20 Q. That's fine.

21 A. That's what this says.

22 Q. Yeah. And did you know that as a general matter

23 that as smokers age that they would consume more

24 cigarettes?

25 A. I remember that at a point in time. I'm not so

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1 sure that's true anymore but that's okay.

2 Q. That's because smokers over time build up some
3 tolerance to the cigarettes; right?

4 MS. McDOLE: Objection to the form.

5 A. You are getting -- you are getting into the
6 usage pattern here and I don't know whether it's
7 tolerance or whether it's a custom or habit. I can't
8 explain their pattern of consumption.

9 Q. Anyhow, what she is trying to emphasize is the
10 importance of getting these first-brand smokers and
11 the value these first-brand smokers has to whatever
12 company attracts them first; correct?

13 MS. McDOLE: Objection to the
14 characterization.

15 A. I think that with any company, you try to review
16 what your future market is and your future market
17 potential and if people reaching the adult age, the
18 entry level, so-called, for smoking, and they are
19 making a choice then as to which brand they should
20 choose, we have a right to be appealing to them at
21 that point in time to make a choice on our behalf. I
22 see nothing wrong with that.

23 Q. And in fact, R.J. Reynolds wanted to direct
24 their focus at these first-usual-brand smokers;
25 correct?

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1 MS. McDOLE: Objection to the form.

2 A. We wanted to aim our advertising and promotion
3 at the young adult smoker.

4 Q. In fact, didn't RJR adopt a specific strategy
5 aimed at what they called the FUBYAS, the first-
6 usual-brand young adult smokers?

7 A. I don't recall that term.

8 Q. I'm going to show you another document that's
9 been previously marked in this litigation as
10 Plaintiffs' Exhibit 1038.

11 A. You've marked it?

12 THE REPORTER: It's already marked.

13 Q. It's already marked. Plaintiffs' Exhibit 1038
14 is a document Bates numbered 50444 6555 through
15 6663. Have you seen this document previously?

16 A. I don't recall, no. I don't think I've seen it
17 but I can't remember.

18 Q. This is a document that was apparently published
19 by the Marketing Development Intelligence Center;
20 correct?

21 A. That's what it says.

22 Q. And if you open up to the second page, Bates
23 number 6556, this has been marked RJR confidential;
24 correct?

25 A. That's what it says.

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- 1 Q. And it asks a question, are "YOUNGER ADULT
2 SMOKERS IMPORTANT?"; correct?
- 3 A. That's what it says.
- 4 Q. Let's turn to the next page. It states that "In
5 the Younger Adult Smoker Opportunity Analysis, we
6 learned," 1, there are 2 distinct classes of young
7 adult smokers; correct?
- 8 A. That's what it says.
- 9 Q. The first class is: "FUBYAS - Those younger
10 adults who are already smokers but have reached the
11 age of choosing a First usual brand. (First Usual
12 Brand Younger Adult Smokers)"; correct?
- 13 A. That's what it says.
- 14 Q. So FUBYAS stands for first-usual-brand younger
15 adult smokers; correct?
- 16 A. I guess it does.
- 17 Q. It then says, "Switchers - Younger adult smokers
18 who have already chosen a First Usual Brand";
19 correct?
- 20 A. Yes.
- 21 Q. And states "and that FUBYAS, not switchers, have
22 driven the success of key brands of this century";
23 correct?
- 24 A. That's what it says.
- 25 Q. So apparently at RJR, you didn't advertise

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1 simply to gain switchers. You were also looking at
2 attracting first-usual-brand smokers; correct?

3 MS. McDOLE: Objection to the form.

4 A. We were aiming our advertising at the young
5 adult smokers.

6 Q. Let's go back about to Plaintiffs' Exhibit 1117
7 briefly. It's this advertisement.

8 A. Do I have that here?

9 Q. You probably do but I've actually got another
10 copy and I'll send it over to you. It's probably
11 quicker.

12 I'd like you to look about eight paragraphs
13 down, the paragraph that begins "Finally." Do you
14 see where I'm at?

15 A. Yes.

16 Q. This statement by R.J. Reynolds says, "Finally
17 -- and this is sometimes hard for people outside the
18 marketing field to understand -- all of our cigarette
19 ads are what we call 'brand advertising.' Its
20 purpose is to get smokers of competitive products to
21 switch to one of our brands, and to build the loyalty
22 of those who already smoke one of our brands";
23 correct?

24 A. That's what it says.

25 Q. The fact of the matter is, your advertising was

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1 also aimed at getting people to select your brand as
2 their first usual brand; correct?

3 A. Our advertising was aimed to hold smokers, our
4 present franchise; two, to get switchers, people who
5 were making the choice to smoke at the adult age
6 hopefully to have an appeal to them to choose our
7 product.

8 Q. But you don't tell the public that you're also
9 aiming at those people who are just choosing to smoke
10 at the current time, do you?

11 MS. McDOLE: Objection to the form.

12 MR. DAVIS: Objection.

13 A. I think this public-issue statement stands on
14 its own as a very responsible, high-road statement
15 about our policies.

16 Q. You didn't tell the public that you were also
17 aiming your advertising at first-usual-brands --
18 brand smokers and that the majority of these
19 first-usual-brand smokers are in fact under the age
20 of 18?

21 MR. DAVIS: Objection.

22 MS. McDOLE: Objection to the compound
23 nature of the question. Is it your assumption first
24 usual brand users aren't switchers?

25 (Interruption by the reporter.)

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1 MR. O'FALLON: Is that a legal objection?

2 A. You're continuing to characterize people in this
3 industry as very devious people with secondary
4 objectives, which I resent greatly with my experience
5 in this industry and other industries. We deported
6 ourselves responsibly, we addressed our messages to
7 our market, our market being young adult smokers
8 whether they are first-time smokers or mature smokers
9 of other brands. That's our whole claim or whole
10 objective.

11 Q. So you admit that you addressed your message to
12 young adult smokers whether they are first-time
13 smokers or smokers of other brands; correct?

14 MS. McDOLE: Objection to the form.

15 A. I don't admit that the way you are saying it.
16 I'm saying that we had advertising out there aimed at
17 young adult smokers and when they reached the age of
18 choice, if they chose to smoke, then we hoped our
19 advertising would influence their choice of our brand
20 versus a Marlboro or Newport.

21 Q. And you knew for the majority of people, their
22 age of choice was under the legal age; correct?

23 MR. DAVIS: Objection.

24 MS. McDOLE: Objection to the form of the
25 question.

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1 A. You're twisting, you are twisting my responses
2 to get your desired answer, which I resent.

3 Q. Again, you knew the majority of people, their
4 age of choice was under the legal age; correct?

5 MR. DAVIS: Objection.

6 MS. McDOLE: Objection, asked and answered.

7 A. We know that people make the choice to smoke or
8 decision to smoke before they reach the legal age, we
9 know that, but then for you to try to line -- line up
10 my questioning or responses to say we therefore
11 appeal to them is outrageous.

12 Q. Let's look on page 6558.

13 A. Which document?

14 Q. That big market document.

15 A. There is only one page of that document. This
16 one?

17 Q. That one. The number 6558.

18 A. Yes.

19 Q. It's stated here that "Strong performance among
20 FUBYAS smokers is critical to long term share in the
21 total smoker market, for both brands and companies";
22 correct?

23 A. That's what this says.

24 Q. You would agree with that; correct?

25 A. That's what this says.

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1 Q. Would you agree with it?

2 MS. McDOLE: Objection to the form.

3 A. You are asking me a question about this and I'm
4 saying this is what the report says.

5 Q. Would you agree generally with that proposition?

6 A. I think it's important for long-term growth in
7 this business that if people first make the decision
8 to smoke that we prefer they smoke our brands because
9 we'd like to hold on to them for as long as they
10 choose to smoke.

11 Q. And that's really what she emphasizes in the
12 next bullet point, that although switching can be
13 important in the near-term market, loyalty and thus
14 first usual brand smokers, are the driving force over
15 the long term; correct?

16 MS. McDOLE: Objection to the form.

17 A. She refers to brand loyalty being important. I
18 think that's important, yes.

19 Q. And this whole notion that when you get these
20 young adult smokers, these first-usual-brand young
21 adult smokers, they are going to be loyal and thus
22 you are going to get what she then talks about in the
23 second bullet point as this effortless gain in your
24 share of market as you go forward; right?

25 MS. McDOLE: Objection to the compound

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1 nature of the question.

2 A. You are taking research and making all these
3 marketing prognostications and if she says that she
4 said it, I'm not going to say whether I agree or
5 disagree.

6 Q. Well that's what her job would be, right, she is
7 a marketing research person?

8 A. That's correct, and she provides information for
9 us to respond to and make decisions. Whether we do
10 or don't accept this, that's our decision.

11 Q. Did you or did you not accept this?

12 A. I don't recall reading this memorandum.

13 Q. Let's go to page 6588. Actually, let's start
14 with 6587.

15 A. Okay.

16 Q. This is entitled how can we do it, basic
17 principles from history; correct?

18 MS. McDOLLE: Misstatement.

19 Q. It states, "HOW WE CAN DO IT, BASIC PRINCIPLES
20 FROM HISTORY"; correct?

21 A. That's what the page says.

22 Q. Number 1 talks about "Being 'In Tune' or 'Out of
23 Tune'"; correct?

24 A. That's what it says.

25 Q. She states that "A successful first usual brand

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1 begins to decline when another brand becomes better
2 "in tune" than its predecessor with the" young adult
3 smoker "wants of the times, in terms of product,
4 positioning, or execution"; correct?

5 A. That's what it says.

6 Q. For example, she says that "Marlboro's unsmiling
7 cowboy was better attuned to the rebellious,
8 flower-child '60s than lighthearted 'All American'
9 WINSTON"; correct?

10 A. That's the example she is using.

11 Q. Let's look on the next page. She then talks
12 about in tune equaling differentiation; correct?

13 A. That's what she -- Yes, that's what she says.

14 Q. She says, to be identifiable to young adults as
15 young adults, a brand must embody elements ("wants")
16 which clearly differentiate the target group from all
17 other groups; correct?

18 A. Correct.

19 Q. Thus, to target young adult smokers 18-20 (first
20 usual brand smokers), the brand must target wants
21 which enduringly differentiate young adult smokers
22 18-20 from all other groups; correct?

23 A. That's what this says.

24 Q. And she then points out that you need to
25 separate them from everybody, including smokers that

- 1 are 21 years and older and any nonsmokers; right?
- 2 A. That's the way she's broken it out.
- 3 Q. Let's look on page 6608. She then talks about
- 4 "DIFFERENTIATING WITHIN YAS TODAY: FUBYAS VS.
- 5 SWITCHERS"; correct?
- 6 A. That's what she has down here.
- 7 Q. She says that throughout this next section we
- 8 will be talking about 18-to-20-year-old smokers,
- 9 FUBYAS, and 21-to-24-year-old smokers, which are
- 10 defined as switchers; correct?
- 11 A. That's what she reports.
- 12 Q. Then let's look at page 6609. She's now talking
- 13 about differences within young adult smokers on key
- 14 needs; correct?
- 15 A. That's what she's listed.
- 16 Q. And she identifies five key needs; correct?
- 17 A. That's what she's articulated here, yes.
- 18 Q. The five needs are belonging, being different,
- 19 upward striving, excitement and sex; correct?
- 20 A. That's what she reports.
- 21 Q. On the next page she notes that belonging is
- 22 enormously important to first usual brand young adult
- 23 smokers; correct?
- 24 A. That's what she says.
- 25 Q. And this need differentiates them from smokers

1 in older age groups; correct?

2 A. That's what she says.

3 Q. Let's go to page 6612. She states that "The
4 NATURE of these needs for FUBYAS" is that --

5 MS. McDOLE: I'm sorry, what page?

6 MR. O'FALLON: 6612.

7 Q. She then talks about "The NATURE of these needs
8 for FUBYAS," correct, belonging and being different?

9 A. That's what she says.

10 Q. She says, belonging to the family has been
11 replaced by belonging to selected peer groups;
12 correct?

13 A. That's what she says.

14 Q. And belonging to accepted peer groups requires
15 being different from family and other peers; correct?

16 A. That's what she says.

17 Q. This whole notion of peer group and peer
18 acceptance, we learned in the 1974 memo, was
19 particularly important among -- during the teen
20 years; correct?

21 MS. McDOLE: Objection to the form.

22 A. I think amongst young people growing up,
23 relationships or a sense of your peer group has
24 always been important, whatever the product category.

25 Q. Especially in that teenage years when teenagers

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1 are trying to separate themselves from their parents
2 and identify themselves as individuals; correct?

3 MS. McDOLE: Objection to the form of the
4 question.

5 A. Children will grow up with whatever
6 relationships that their parents have established. I
7 can't -- I can't speak to that.

8 Q. Sir, you're familiar with the Camel campaign;
9 correct?

10 A. Yes.

11 Q. Isn't it true that the Camel campaign in large
12 part took this FUBYAS research and undertook to aim
13 the Camel campaign at this first-usual-brand
14 young-adult-smoker group?

15 A. No.

16 Q. I'd like to hand you a document previously
17 marked as Plaintiffs' Exhibit 1039. Plaintiffs'
18 Exhibit 1039 is a document Bates numbered 50396 9310
19 through 9312. Have you seen this document
20 previously?

21 A. No.

22 Q. This is a document dated January 15 of 1985;
23 correct?

24 A. Yes.

25 Q. And it's entitled "CAMEL PERCEPTIONS FROM

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1 QUALITATIVE FUBYAS RESEARCH," isn't it?

2 A. That's what it says.

3 Q. It says, "In response to your request, here are
4 some details of the Strategic Research Group
5 qualitative research from August-September 1984,
6 which led us to conclude that CAMEL holds potentially
7 leverageable interest among 18-20 year old smokers
8 (FUBYAS)"; correct?

9 A. That's what it says.

10 Q. So it appears that R.J. Reynolds had concluded
11 that Camel had some potentially leverageable interest
12 among these 18-to-20-year-old-smokers; correct?

13 MS. McDOLE: Objection to the form.

14 A. To answer your question more accurately, as I
15 don't know where you're going, but I was there, we
16 felt that Winston, to close the gap between Winston
17 and Marlboro was almost irretrievable and impossible
18 and therefore we thought the best brand to put our
19 efforts behind to try to perform well in the
20 marketplace was Camel.

21 Q. But you did that after you conducted this FUBYAS
22 research; correct?

23 MS. McDOLE: Objection to the form.

24 A. You're incorrect. I never heard of FUBYAS, I
25 never heard of the term, I don't remember it. I

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1 happened to have played a major role with regard to
2 Camel and its need in the United States market, and
3 it was my own instinctive feelings about the brand.

4 Q. Well let's see what Ms. Burrows had to say. She
5 says that "As you will see below, we did not find
6 that FUBYAS reacted in an overall positive way to
7 CAMEL. Their product perceptions, in particular,
8 were put very negatively -- a 'too strong',
9 'non-filter' smoke. However, the FUBYAS we
10 interviewed" -- You interviewed 18 to 20 year olds;
11 right?

12 MS. McDOLE: Objection to form.

13 A. If that's what you say. I don't know if we did.

14 Q. It's not me saying it, sir, it's your own
15 internal documents.

16 A. I'm reading this document for the first time,
17 sir; okay? If she's reporting this accurately, then
18 obviously it happened. That's all I can say.

19 Q. She's saying, "the FUBYAS we interviewed
20 consistently talked about CAMEL with a color and
21 emotional involvement which suggested some
22 fascination, a touch of excitement and mystique about
23 CAMEL, which was lacking in their comments on RJR's
24 other brands"; correct?

25 A. That's what she reports.

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1 Q. She then goes through six points -- right? --
2 awareness, visual interest, non-filter heritage and
3 authenticity, link to FUBYAS social groups, touch of
4 the edge and in brand potential; correct?

5 A. That's what it goes on to report, yes.

6 Q. Then let's look on the last page. She says that
7 "Although all 6 of these points rest on our
8 interpretations of qualitative input from FUBYAS
9 respondents, they are sufficient to convince us that
10 there is a leverageable 'spark' for CAMEL, among this
11 age group, which warrants further consideration";
12 correct?

13 A. That's right.

14 Q. Again the age group is the 18-to-20-year-old age
15 group; correct?

16 A. In this memorandum, that's correct.

17 Q. And is it your testimony that the
18 18-to-20-year-old age group was not one of the
19 primary focuses of the Joe Camel campaign?

20 MS. McDOLE: Objection to the form.

21 A. Your question is totally inaccurate so I can't
22 answer it. You are relating the Joe Camel campaign
23 to a memorandum written in 1985 which to the best of
24 my knowledge the Joe Camel -- Joe Camel campaign was
25 not then existence in the U.S., so if you will ask

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1 your questions more correctly and accurately, then
2 I'll try to answer them.

3 Q. Is it your testimony that the 18-to-20-year-old
4 age group did not become one of Joe Camel -- of the
5 Joe Camel campaign's primary focuses?

6 A. If you are now switching gears, which apparently
7 you are, to Joe Camel, then I will tell you that we
8 were hoping that we would appeal to the young adult
9 smoker with our Joe Camel campaign and wrest market
10 momentum from Marlboro.

11 Q. I didn't change my question at all, sir. My
12 previous question was: "And is it your testimony
13 that the 18-to-20-year-old age group was not one of
14 the primary focuses of the Joe Camel campaign?"

15 A. You didn't use Joe Camel, you used Camel before
16 and in the context of this memorandum, so I'm just
17 trying to be consistent with what you are showing me
18 and the questions you are asking and if you are going
19 to jump around, then I'll jump around.

20 Q. Well, sir, I read it precisely off my computer
21 screen.

22 MS. McDOLE: Why don't you let him see the
23 computer screen, too, since you are using it all the
24 time.

25 MR. O'FALLON: You have it, ma'am, it's

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1 your client.

2 MS. McDOLE: Do me a favor and don't call
3 me ma'am. Most of us women don't care for that.

4 (Interruption by the reporter.)

5 MR. O'FALLON: What would you like to be
6 called?

7 MS. McDOLE: Miss McDole is fine.

8 MR. O'FALLON: Okay. Anything else?

9 MS. McDOLE: That's it for right now.

10 MR. O'FALLON: You really do love to
11 interrupt my questioning, don't you? You just live
12 for it.

13 MS. McDOLE: I don't think there was a
14 question pending.

15 THE WITNESS: Would you restate the
16 question to me, please?

17 MR. O'FALLON: Well why don't you have your
18 attorney there tab back up to where I asked both
19 questions, then, as Ms. McDole suggested.

20 MR. DAVIS: I don't know how to tab back
21 up.

22 MR. O'FALLON: Okay. Ms. McDole, do you
23 want to do it for him?

24 MS. McDOLE: I have no idea what questions
25 you are asking at this point.

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1 MR. O'FALLON: So I guess we are past
2 that.

3 BY MR. O'FALLON:

4 Q. Let's go on to Plaintiffs' Exhibit 1122.
5 Plaintiffs' Exhibit 1122 is a document Bates stamp
6 numbered 50458 5737 through 5757. Have you seen this
7 document previously?

8 A. I don't recall at all.

9 Q. This is another marketing research report;
10 correct?

11 A. That's what it appears to be.

12 Q. It's dated February 1st of 1985; correct?

13 A. That's what it says on the heading.

14 Q. And it's entitled CAMEL YOUNGER -- YOUNGER ADULT
15 SMOKER FOCUS GROUPS; correct?

16 A. That's what it says.

17 Q. Do you recall there being focus groups done
18 around this time on numerous concepts for Camel,
19 including what was called the French Camel?

20 A. I just remember that we had felt that Camel had
21 opportunity for us in the U.S. market and we were
22 looking at every possible campaign that was
23 successful around the world.

24 Q. And the predecessor of the ultimate Joe Camel
25 campaign was the French Camel campaign; correct?

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1 A. Yes.

2 Q. Let's look at page -- Let's look at the first
3 page under the background. Are you with me?

4 A. I'm reading along with you.

5 Q. "Due to the importance of younger adult smokers,
6 CAMEL has developed a new advertising campaign which
7 is directed solely towards this group"; correct?

8 A. That's what it says.

9 Q. "Although the new campaign is very different
10 from the current campaign, it was developed to
11 supplement but not replace the CAMEL World Campaign";
12 correct?

13 A. That's what it says.

14 Q. It then talks about various executions that were
15 tried out for this campaign; correct?

16 A. That's what -- That's what it's reporting on,
17 yes.

18 Q. And there is basically six different ad
19 campaigns that you tried out on these folks; right?

20 A. I guess at that time, if this report is
21 reporting on that, that's what we did, yes.

22 Q. And on page 5739 -- that's kind of the second
23 full page; I think that's what you're on -- it says
24 up at the top before the number 1, it says, "Of the
25 six themes, 'Go With It' and the 'French Camels'

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1 appeared to attract the most positive attention";
2 correct?
3 A. That's what it says.
4 Q. It says, "General reactions to each theme was as
5 follows"; correct?
6 A. That's what it says.
7 Q. And under 2, "French Camels," it states as
8 follows: "These ads were well received due to the
9 fun/humor aspects of the cartoons"; correct?
10 A. That's what it says.
11 Q. "More than any other theme, the 'French Camels'
12 appeared to attract the respondents' attention";
13 correct?
14 A. That's what it says.
15 Q. It says, "The main drawbacks of these executions
16 were that: one, they may be more appealing to an
17 even younger age group"; correct?
18 A. That's what it says.
19 Q. And since this is already the youngest legal age
20 group, that would mean underage smokers; correct?
21 MS. McDOLE: Objection to form.
22 MR. DAVIS: Objection.
23 A. I don't know that.
24 Q. "And two, there is some confusion as to the
25 meaning behind them (some focus group members with

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1 hard-pressed to explain the purpose of the ads)";

2 correct?

3 A. That's what it says.

4 Q. And if you look back at the French Camels, and

5 these are not great copies of these documents but

6 they start at page 5745 through 5747, is this the

7 French Camel campaign that you recall, these three

8 pages?

9 A. To the extent that I can see it, it looks like

10 the funny Camel campaign from France.

11 Q. It's kind of a Camel head, kind of a cartoon-ish

12 Camel --

13 A. Bursting through a billboard or -- yes.

14 Q. Now had you actually run these ads in America at

15 one point as part of a campaign just as like posters?

16 A. No, I don't believe we have.

17 Q. But these were run in France; correct?

18 A. They were part of our advertising campaign in

19 France.

20 Q. Now one of the things this new Camel campaign

21 was going to try to do was use this whole notion of

22 peer acceptance and influence to encourage people to

23 smoke Camels; correct?

24 A. That is not a -- The way you are stating it is

25 not the objective. The objective was to appeal to

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1 young adult smokers with a campaign competitive to
2 Marlboro and not to get at what you call the peer
3 issue with younger people, if that's what you are
4 trying to get me to say.

5 Q. Let's look at the document Plaintiffs' Exhibit
6 1040. Plaintiffs' Exhibit 1040 is a document Bates
7 stamp numbered 50396 9238 through 9242, dated March
8 12 of 1986; correct?

9 A. Yes.

10 Q. This is a memo to Mr. D. N., and I always
11 pronounce his name wrong, Iauco?

12 A. Iauco.

13 Q. Iauco. From an I. T. Caufield; correct? Mr.
14 Caufield or -- yeah, I guess it's Rick Caufield that
15 signed this?

16 A. Probably.

17 Q. Do you know who that was?

18 A. I don't recall whether he was in marketing or
19 market research.

20 Q. How about Mr. Iauco?

21 A. Iauco was in marketing.

22 Q. The title of this memo is: "CAMEL New
23 Advertising Campaign Development"; correct?

24 A. That's what it says.

25 Q. It then lists a target audience; correct?

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1 A. Yes.

2 Q. And "It is recommended that creative efforts
3 reflect a primary focus on developing advertising
4 which is highly relevant, appealing and motivational
5 to 18-24 male smokers"; correct?

6 A. That's correct.

7 Q. Then it says, "This recommendation is based on
8 consideration of the marketplace dynamics which are
9 perpetuating Marlboro's growth (i.e., brand loyalty
10 and peer influence), and which strongly suggests that
11 repositioning CAMEL as the relevant brand choice for
12 younger adult smokers will be critical to generating
13 sustained volume growth"; correct?

14 A. That's what he says.

15 Q. He then lists an advertising objective;
16 correct?

17 MS. McDOLE: Objection, you skipped
18 something. It's not the next thing he does.

19 Q. The next heading is "ADVERTISING OBJECTIVE";
20 correct?

21 A. That's what it says.

22 Q. He states, "Overall, CAMEL advertising will be
23 directed toward using peer acceptance/influence to
24 provide the motivation for target smokers to select
25 Camel"; correct?

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1 A. That's what he said.

2 Q. "Specifically, advertising will be developed
3 with the objective of convincing target smokers that
4 by selecting CAMEL as their usual brand they will
5 project an image that will enhance their acceptance
6 among their peers"; correct?

7 A. That's what it says.

8 Q. And again acceptance among peers is also a
9 reason that people begin to smoke in the first place;
10 correct?

11 MS. McDOLE: Objection to the form.

12 A. Acceptance among peers is what affects people's
13 decision to smoke and also perhaps to influence their
14 choice of a brand.

15 Q. Let's look on page 9240, at the bottom. At the
16 top it's generally addressing copy strategies;
17 correct?

18 A. If you will give me time, I'll tell you if
19 that's correct.

20 Okay.

21 Q. One of the copy strategies listed at capital B
22 is "Cool Attitude"; correct?

23 A. That's what it says.

24 Q. And it says, "The objective of the advertising
25 is to leverage the nonconformist, self-confident

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1 mindset historically attributed to CAMEL users so
2 that the brand becomes" relevant -- "a relevant,
3 appealing choice for today's younger adult smokers";
4 correct?

5 A. That's correct.

6 Q. And then on the next page he sets out the
7 rationale for why you are doing that; correct?

8 A. That's correct.

9 Q. And part of the rationale is: "Aspiration to be
10 perceived as cool/a member of the in-group is one of
11 the strongest influences affecting the behavior of
12 younger adult smokers"; correct?

13 A. Where do you see "strongest"? Where are these
14 words you are picking at?

15 Q. Here, do you see under "Rationale," and do you
16 see where it says "Aspiration"?

17 A. Fine. You are moving rather swiftly through
18 this so I'm trying to catch up with you; okay?

19 Q. That's fine. Let's go back and reread it.

20 A. I'm reading "rationale" again.

21 Q. It says, "Aspiration to be perceived as cool/a
22 member of the in-group is one of the strongest
23 influences affecting the behavior of younger adult
24 smokers"; correct?

25 A. Right, yeah, patently obvious.

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1 Q. It says, "Personality attributes respected by
2 target smokers inherent in their definition of cool
3 include a degree of rebellion or non-conformity,
4 along with self-confidence to remain in control of
5 the somewhat risky, exciting lifestyle associated
6 with these characteristics"; correct?

7 A. That's what it says.

8 Q. Both of those would describe the Joe Camel
9 campaign; correct?

10 A. Probably. I don't -- I don't -- I say
11 probably.

12 Q. The Joe Camel campaign was first unveiled in
13 1987; correct?

14 A. I believe so.

15 Q. It was your 75th anniversary Camel, I believe.

16 A. Well that had no relevance as far as the
17 campaign was concerned. It happened to be
18 coincidence that it came out at the 75th anniversary.

19 Q. It was kind of used to kick off that 75th
20 anniversary, wasn't it?

21 A. Well I'm just saying it wasn't relevant. The
22 75th anniversary of Camel did not drive the Joe Camel
23 campaign. The Joe Camel campaign was not developed
24 to just honor the 75th anniversary, so a clear
25 distinction between the two.

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1 Q. I'm going to show you Plaintiffs' Exhibit 1042.

2 And --

3 MR. O'FALLON: Can we take a five-minute
4 break?

5 MR. DAVIS: Sure.

6 (Recess taken from 1:41 to 1:49 p.m.)

7 BY MR. O'FALLON:

8 Q. When we took a break we were starting to look at
9 Plaintiffs' Exhibit 1042, a document Bates numbered
10 50718 1150 through 1157. Do you have that in front
11 of you, sir?

12 A. Yes.

13 Q. Is this a document you have seen previously?

14 A. I don't recall.

15 Q. This is discussing the volume impact of Camel
16 YAS growth; correct?

17 A. That's what it says.

18 Q. And this concerns specifically the growth in
19 1988; correct?

20 A. That's what this shows, yes.

21 Q. The Joe Camel campaign was started in 1987;
22 right?

23 A. I believe so.

24 Q. It says, "In 1988, Camel Ex. Regular posted a
25 2.2 point national gain in usual brand share among

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1 males 18-24 (the brand's target) and a gain of 1.4

2 points among total 18-24 (YAS)"; correct?

3 A. That's what it says.

4 Q. It says, "This was the largest 12-month YAS gain

5 ever reported on Tracker, for CAMEL or any other RJR

6 brand"; correct?

7 A. That's what it says.

8 Q. So your Camel campaign, your Old Joe campaign,

9 was very successful, particularly against this usual

10 brand share; correct?

11 MS. McDOLE: Objection to the form of the

12 question.

13 A. Against the young adult smoker.

14 Q. Well actually they state "in usual brand share

15 among males 18-24"; correct?

16 A. Yes.

17 Q. And that usual brand that we've seen earlier

18 often refers to an 18-to-20-year-old category;

19 correct?

20 MS. McDOLE: Objection to the form of the

21 question.

22 A. You said 18-to-20-year-old category?

23 Q. Yes.

24 A. 18 to 20.

25 Q. Twenty, yes?

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1 A. I don't recall ever talking 18 to 20 here today
2 or in the past.

3 Q. You don't recall that FUBYAS was defined as 18
4 to 20 year olds?

5 MS. McDOLE: Objection to the form.

6 A. If that's what's in those documents. I saw the
7 term for the first time so -- I don't remember all
8 these definitions from one page to the next.

9 Q. It then goes on to state that, "Notably, the
10 national gains were primarily due to YAS growth
11 outside CAMEL's traditionally strong PMSA" -- and the
12 PMSA is the Pacific Mountain region?

13 A. Yes.

14 Q. -- "ending some years of YAS share erosion
15 outside the Pacific/Mountain"; correct?

16 A. That's what it says.

17 Q. It says, "The timing of this turnaround appears
18 closely related to key changes in CAMEL marketing:

19 "National expansion of the 'Old Joe' imagery,"
20 and,

21 "Return of YAS-oriented retail pack programs,
22 which had been absent outside CAMEL's emphasis
23 markets for at least a year." Correct?

24 A. That's what it says.

25 Q. So you have really two things going on. You

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1 have this new cartoon, Old Joe, you are using in your
2 advertising, and you are also giving retail pack
3 programs which are basically, what, discounts on
4 cigarettes?

5 MS. McDOLE: Objection to the form.

6 A. You used the phrase "cartoon." It was an
7 animated image rather than a human in the ad. I
8 don't refer to it as a "cartoon." Secondly, at the
9 point of sale we had probably more presence for brand
10 than we had in the past.

11 Q. Well the French Camel was referred to in the
12 previous document as a cartoon, was it not?

13 A. Perhaps it was. I never thought of it as a
14 cartoon.

15 Q. Well apparently at least some people in Reynolds
16 considered it to be a cartoon; right?

17 MS. McDOLE: Objection to the form.

18 A. I don't know what they -- what they perceived it
19 to be.

20 Q. If you just look at it, it looks like a cartoon
21 character, doesn't it?

22 MS. McDOLE: Objection to the form.

23 A. I said to you I don't choose to use the word
24 "cartoon" as a description of that animal.

25 Q. Well I understand that you don't choose to use

1 that term, but I guess I'm a little confused as to
2 why you would not choose to call a cartoon a
3 cartoon.

4 A. I guess I'm just confused with your line of
5 questioning. I was the one that insisted we bring
6 the funny Camel campaign over here to the United
7 States, and I know what I thought of it all along and
8 what I still think of it to this day. So your
9 assumption and conclusion as "cartoon," I just have a
10 problem with that. If people chose to refer to it
11 that way over time in memorandums, I cannot stop
12 people from writing whatever they want to write.

13 Q. Well you don't deny that it is a cartoon, do
14 you?

15 MS. McDOLE: Objection, asked and
16 answered.

17 A. I'm telling you that in my view I don't call it
18 a cartoon. It's an animated character.

19 Q. And you don't consider animated characters to be
20 cartoons?

21 MS. McDOLE: Objection.

22 MR. DAVIS: Objection.

23 MS. McDOLE: Asked and answered, harassing
24 the witness.

25 A. I'm not going to answer your questions along

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1 these lines.

2 Q. Is Snoopy a cartoon or animated character?

3 A. Snoopy's not in any of our Camel campaigns so I
4 can't tell you.

5 Q. You can't tell me whether or not Snoopy is a
6 cartoon or animated character?

7 A. I think we are getting far afield here
8 personally.

9 MR. O'FALLON: I move to strike that as
10 nonresponsive.

11 Q. Is Snoopy a cartoon or animated character?

12 MS. McDOLE: Objection, argumentative.

13 A. Snoopy is probably a cartoon strip.

14 Don't leave it there. Camel was never a cartoon
15 strip, it was never in cartoons or magazines or
16 comedy magazines, so let's try to keep these
17 distinctions clear and not try to just add one and
18 one to get three.

19 Q. Is that what you think I'm doing, sir, adding
20 one and one to get three?

21 A. I think it's a line of questioning that leaves
22 things open ended, which I prefer to close them.

23 Q. And the last word, from your point of view, is
24 that since Camel, since Joe Camel didn't appear in a
25 cartoon strip you're not going to call it a cartoon?

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1 MR. DAVIS: Objection, asked and answered.
2 Repetitive.

3 Why don't you move on to something else.

4 MR. O'FALLON: I'm waiting for an answer.

5 MS. McDOLE: Objection. His answer is
6 already on the record.

7 THE WITNESS: I've answered.

8 MS. McDOLE: This is harassment.

9 Q. Let's look at page 1152. Are you on that page,
10 sir?

11 A. You said let's look at it so I'm on that page.

12 Q. It states that "The most direct evidence of YAS
13 impact on CAMEL Ex. Regular sales is its share trend
14 in Nielson pack-outlets outside the PMSA (about 300
15 convenience plus small food stores)"; correct?

16 A. Yes.

17 Q. And these --

18 A. That's what it says.

19 Q. "In these stores, YAS account for about 13.4% of
20 volume and appear to have generated sales gains for
21 CAMEL Ex. Regular of the expected amount (.2 share
22 points) and the expected timing"; correct?

23 A. That's what it says.

24 Q. It says, "This is the largest sustained increase
25 ever seen in CAMEL Ex. Regular's share in these

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1 outlets"; correct?

2 A. That's what it says.

3 Q. Sir, were you aware that convenience stores are
4 also the place where most underage smokers buy their
5 cigarettes?

6 A. I was not aware of that being the point of
7 purchase for most underage smokers, but that's not
8 relevant to what we are reading here.

9 Q. Well it would indicate that perhaps some of your
10 net gains are coming from underage smokers, wouldn't
11 it?

12 MS. McDOLE: Objection to the form.

13 A. I don't draw that conclusion at all. Perhaps I
14 should ask you whether you are aware convenience
15 stores took on more importance in the sale of
16 cigarettes than any other form of distribution in the
17 United States, because that's what happened.

18 Q. And one of the reasons they took on so much
19 importance is because convenience stores are where
20 these first usual brand users tend to buy their
21 cigarettes, including people under the age of 18;
22 correct?

23 MR. DAVIS: Objection.

24 MS. McDOLE: Objection to the form, to the
25 compound nature.

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1 A. That may be your conclusion. I'm just telling
2 you convenience stores, as a marketing outlet for
3 cigarettes, took on more and more importance.

4 Q. And of course would have drawn more and more of
5 R.J. Reynolds' resources as they did so; correct?

6 MS. McDOLE: Objection to the form.

7 A. You place your resources where the biggest
8 potential is.

9 Q. And you placed a lot of resources on these
10 convenience stores, didn't you, sir?

11 A. To go after the smoking public who are legally
12 authorized to buy our product, and what's wrong with
13 that?

14 Q. And apparently also the smoking public that's
15 not legally authorized to buy your product; correct?

16 MR. DAVIS: Objection.

17 MS. McDOLE: Objection to the form.

18 A. That is a very threatening statement because
19 that was never the intent of our campaigns in
20 convenience stores. I resent that.

21 Q. You don't deny that you were going after
22 first-usual-brand young adult smokers, were you?

23 MS. McDOLE: Objection.

24 A. We were going after young adult smokers.

25 Q. Let's look on page 1155. At the bottom of that

1 page it states that, "While 'Old Joe' may be able to
2 generate growth by imagery alone, the above patterns
3 suggest that retail pack programs play an important
4 role in maintaining loyalty among the brand's YAS
5 franchise during this key stage in brand choice, as
6 well as in generating trial which could stimulate
7 further growth momentum"; correct?

8 A. That's what it says.

9 Q. And this key stage in brand choice, would that
10 be referring to that key stage when you're selecting
11 your first usual brand?

12 A. You are moving down a line of questioning here
13 that I will be very careful in answering.

14 We are appealing to people when they are about
15 to make a decision, when they are at legitimate age
16 to make a purchase decision.

17 Q. And would that include people under the age of
18 18?

19 A. Absolutely not.

20 Q. It then concludes, "Thus, reducing CAMEL's pack
21 presence would likely jeopardize the brand's ability
22 to sustain the rate of YAS growth achieved in 1988";
23 correct?

24 A. That's what it says.

25 Q. Did you keep the pack presence in place in 1988?

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1 A. I don't recall. You must by now recognize there
2 were many other brands in the Reynolds portfolio and
3 it took its turn in its rotation at retail because we
4 had other brands to support as well.

5 Q. The 18-to-20-year-old group was one of the
6 focuses again of this Joe Camel campaign; correct?

7 MS. McDOLE: Objection to the form. I
8 believe the testimony was 18 to 24.

9 A. Our Camel campaign --

10 MR. O'FALLON: Ms. McDole, my question
11 stands.

12 MS. McDOLE: Well, all right,
13 mischaracterization of testimony.

14 MR. O'FALLON: Well whatever you want to
15 say.

16 Q. Let me go back and re-ask this question because
17 Ms. McDole made an inappropriate objection.

18 Question: "The 18-to-20-year-old group was one
19 of the focuses again of this Joe Camel campaign;
20 correct?"

21 MS. McDOLE: Objection to the form and
22 statement.

23 A. The young adult smoking population was an
24 important part of our total target for the new Camel
25 campaign.

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1 Q. Was the 18-year-old group one of the focuses of
2 the campaign?

3 A. I said that the 18-to-24-year-old group was an
4 important part of the total targeting of our
5 advertising.

6 Q. And I asked you about 18 to 20.

7 A. I said "young adults." And I'm awfully sorry,
8 you are asking 18 to 20. I don't split hairs like
9 that. We never did in my time.

10 Q. Let me show you a document that's been
11 previously marked as Plaintiffs' Exhibit 1044. This
12 is dated March 20th of 1989 and is Bates stamp
13 numbered 50686 0144. Have you seen this document
14 previously?

15 A. No. I retired.

16 Q. Before this?

17 A. That's right.

18 Q. What day did you retire?

19 A. The end of February of '89.

20 Q. Okay. Let's see what they had to say three
21 weeks earlier -- three weeks later.

22 This is about "CAMEL Performance Analysis";
23 correct?

24 A. That's what it is.

25 Q. It says, "Attached is an extremely condensed

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1 version of MRD's March 10 presentation on CAMEL's
2 performance in 1988"; correct?

3 A. That's what it says.

4 Q. It says, "Briefly put, the implications from
5 this presentation are as follows:" First bullet
6 point: "CAMEL's ability to reach and convert younger
7 adult smokers is significant with the 18-20 year old
8 group driving this growth"; correct?

9 A. That's what it says.

10 Q. It says, "Accordingly, the brand should maintain
11 its single-minded focus against this important smoker
12 group"; correct?

13 A. That's what it says.

14 Q. And it's referring to the 18-to-20-year-old
15 group; right?

16 A. Legal age to smoke.

17 Q. And you knew that when you focused on 18 to 20
18 year olds you were necessarily going to also be
19 attracting underage smokers; correct?

20 MR. DAVIS: Objection.

21 MS. McDOLE: Objection to the form.

22 A. It's a devious question. We targeted our
23 audience, our advertising at the young adult smoker.
24 There was no subliminal or subconscious or devious
25 motivation on the part of the tobacco company to

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1 appeal to people prior to their decision or their
2 legal age to smoke. You keep coming at that, and
3 it's a mischaracterization of this industry, which
4 has a hell of a lot more integrity than you ever
5 allow to be represented.

6 Q. Didn't your own documents state that underage
7 smokers necessarily emulate the next oldest group, in
8 this case which would be the 18-to-20-year-old
9 smokers?

10 MS. McDOLE: Objection to the form.

11 MR. DAVIS: Objection.

12 A. Documents can certainly indicate -- you have to
13 know where your market is, where is it going, where
14 is it going to come from. What you then indeed do
15 about that is a totally different situation.

16 Q. Well --

17 A. So that's a -- It's just like looking at 15 year
18 olds before they buy a car, see what they're going to
19 buy, are they going to buy a Mercedes, or an
20 Oldsmobile or a Cadillac. I just don't --

21 Q. Specifically what your company did was use what
22 you call an illustrated trade character, or what I
23 call a cartoon, knowing that it may well have an even
24 younger audience; correct?

25 MR. DAVIS: Objection.

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1 MS. McDOLE: Objection to the form.

2 A. That's not correct.

3 Q. And in fact what studies have shown since that
4 time is that even three to six year olds, more than
5 50 percent of them recognize Joe Camel; correct?

6 A. There was a high awareness amongst that, just as
7 there was a high awareness among those same people of
8 the Marlboro cowboy and the horse.

9 Q. All of which were very successful sellers in the
10 underage market; correct?

11 MS. McDOLE: Objection to form.

12 A. I don't know what prompted those people to
13 smoke, and I can't comment any further than that,
14 quite frankly.

15 Q. And once again I believe it's been your
16 testimony you were responsible for the Joe Camel
17 campaign; correct?

18 A. I was the primarily force behind bringing it
19 over here.

20 Q. I'd next like to turn to the issue of
21 additives. You would agree with me that most of us,
22 if we go out and buy a candy bar or a set of cupcakes
23 in a package, that we could look at that package and
24 know exactly what's in it; correct?

25 MS. McDOLE: Objection to the form.

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1 A. No.

2 Q. You don't think so?

3 A. I spent most of my life in the food industry.

4 You can still walk up and down the aisles and still

5 not know what's in every aisle so -- but that's a

6 general statement you are making.

7 Q. But they list the ingredients; right?

8 A. They list a lot of the ingredients.

9 Q. The fact of the matter is, if we go up and buy a
10 pack of cigarettes, we don't know what's in that pack
11 of cigarettes; correct?

12 MR. DAVIS: Objection.

13 A. The ingredients, per se, are not listed on the
14 package.

15 Q. And the industry has always fought tooth and
16 nail against revealing the ingredients of their
17 cigarettes; correct?

18 MS. McDOLE: Objection to the form.

19 A. That's a mischaracterization, but the industry
20 has certain proprietary information, highly
21 competitive, and the information is available, it is
22 on file and has been provided to the government in
23 specific, complete detail.

24 Q. But if I were to go get that information, all I
25 would see is a long list of ingredients. I wouldn't

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1 have any idea what I'd be getting in, for instance, a
2 Camel cigarette, would I?

3 MR. DAVIS: Objection.

4 A. I don't remember that. I don't recall how the
5 information was provided.

6 Q. In any event, it's always been the industry's
7 position they had to maintain a unified approach on
8 that; correct?

9 A. The industry conformed with all government
10 requests to provide all information and on a
11 consistent and uniform basis.

12 Q. Well what I'm saying, sir, is you all got
13 together and agreed that you had to take a uniform
14 stand on this issue; right? No breaking ranks, no
15 one company going out and actually competing on this
16 whole notion of additives; right?

17 MR. DAVIS: Objection.

18 MS. McDOLE: Objection to the form.

19 A. You are distorting terribly here the role of the
20 tobacco companies and how they cooperated with the
21 government on providing information. It was a
22 competitive climate and it's in that context that
23 information was provided.

24 Q. I'm going to hand you a document that's been
25 previously -- that I need to have marked. This is a

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1 Liggett document.

2 (Plaintiffs' Deposition Exhibit 4113 was
3 marked for identification.)

4 BY MR. O'FALLON:

5 Q. 4113 is a document Bates stamp numbered LG
6 0299076 through 092. Have you seen this document
7 previously?

8 A. I don't remember it.

9 Q. Why don't you --

10 A. I don't think I ever saw it.

11 Q. Why don't you look at page, last four Bates
12 numbers, 9081?

13 A. 9081?

14 Q. Yeah. You were copied on this document;
15 correct?

16 A. Yes, I was.

17 Q. The check mark by it would indicate that this is
18 your copy of the document; correct?

19 A. Apparently.

20 Q. Let's go back to the first page. This is a
21 summary of notes from an International Ingredients
22 Committee meeting in Frankfurt, Germany on June 29
23 and 30 of 1993; correct?

24 A. That's what it says.

25 Q. This is from a Dennis Dietz?

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- 1 A. That's what it says.
- 2 Q. Who was that?
- 3 A. I don't remember.
- 4 Q. He says, "I represented Liggett at an
- 5 International Ingredients Committee meeting held in
- 6 Frankfurt, Germany on June 29 and 30, 1993. Major
- 7 topics discussed during the two day meeting were
- 8 ingredients or additives on 6/29/93 and agrochemicals
- 9 or pesticides on 6/30/93"; correct?
- 10 A. That's what it says.
- 11 Q. Then it goes on in the next paragraph to state,
- 12 "The Frankfurt meeting represents the third in a
- 13 series of international committee ingredients
- 14 meetings initiated in London on November 20, 1992";
- 15 right?
- 16 A. That's what it says.
- 17 Q. It says, "The meeting format and focus has
- 18 evolved from an informal exchange of information to a
- 19 product oriented or results driven agenda"; correct?
- 20 A. That's what it says.
- 21 (Interruption by the reporter.)
- 22 Q. Let's go down. It says, "Attendance has grown
- 23 to 37 as shown on the attached list of participants";
- 24 correct?
- 25 A. That's what it says.

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1 Q. It says, "Philip Morris...British-American
2 Tobacco...and R.J. Reynolds...are clearly the most
3 actively committed cigarette manufacturers due to
4 their international market shares and resources";
5 correct?

6 A. That's what it says.

7 Q. It then states that "The importance of a unified
8 or harmonized industry position in the face of a
9 worldwide anti-tobacco movement is recognized by all
10 and provides a basis for the goals and objectives of
11 the committee"; correct?

12 A. That's what it says.

13 Q. And was that your general understanding, that on
14 the issue of additives or the disclosure of
15 ingredients that you and the industry had always
16 taken a unified approach?

17 MS. McDOLE: Objection to the form.

18 A. I don't understand the context in which you are
19 asking that question. The industry would be
20 requested or whatever for information, facts, data or
21 whatever, and from a competitive standpoint again, we
22 wanted to be sure that we were not providing
23 information that helped or benefited our
24 competition. It's clearly in that context.

25 Q. Well nothing prevented you from individually

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1 disclosing to the government what was in your
2 cigarettes; correct?

3 A. Again let's talk about competition, and
4 information is readily available and if formulation
5 is critical, then there is no reason for any company
6 to provide information that the others are -- I went
7 through this in the spirits industry, so I can tell
8 you that.

9 Q. And again you decided to all get together here
10 and make sure you had an agreement as to what
11 ingredients you would disclose to the government or
12 to the public; correct?

13 MR. DAVIS: Objection.

14 MS. McDOLE: Objection to the form.

15 A. That's a very -- That's a devious question once
16 again. You are saying we were going to conspire, and
17 implying -- and agree as to what we would provide?
18 That wasn't the question. To -- Whether to provide
19 but not to selectively, which is what I'm gathering
20 from your line of questioning here.

21 Q. Did you all agree as to the manner and form in
22 which you would eventually agree to produce your
23 ingredients list?

24 A. I don't remember this event even happening, so
25 sorry.

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1 Q. But you were copied on this; right?

2 A. Fine, I was copied. I don't remember it.

3 Q. And this document would indicate that the whole
4 industry has basically agreed that they --

5 A. I don't know where --

6 MS. McDOLE: Wait, wait.

7 Q. -- that they need a unified or harmonized
8 industry position; correct?

9 MR. DAVIS: Object.

10 MS. McDOLE: Objection to the form.

11 A. I don't recall, I don't recall how this finally
12 evolved or developed or what the result was so I
13 can't answer your question.

14 MR. O'FALLON: Let me take one quick
15 minute.

16 THE REPORTER: Off the record.

17 (Recess taken from 2:12 to 2:27 p.m.)

18 MS. McDOLE: Before I begin, Mr. Davis, I
19 know that you and your client have not signed the
20 protective order in this case with respect to the
21 documents.

22 MR. DAVIS: Correct.

23 MS. McDOLE: But I also understand that you
24 both agree that you will keep the exhibits
25 confidential and not publish them to third parties.

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1 MR. DAVIS: Yes, that's correct.

2 EXAMINATION

3 BY MS. McDOLE:

4 Q. Good afternoon, Mr. Horrigan. I have a few
5 follow-up questions as a result of the questioning by
6 the state of Minnesota.

7 You were shown a great deal of documents during
8 your deposition today by Minnesota. Had you seen
9 most of those documents before?

10 A. Most of them I had not seen.

11 Q. And did you have a chance to read through all
12 those documents during your deposition today,
13 entirely?

14 A. It wasn't possible.

15 Q. Okay. Let me show you one document that the
16 attorney for the state asked you about, Exhibit No.
17 4109, which is entitled on the first page "An Open
18 Debate." Is that a document that you had seen
19 before?

20 A. I think I mentioned I don't remember it, I don't
21 know what context it was used in at the company, or
22 the event or anything.

23 Q. The attorney for the state directed your
24 attention to a couple of excerpts in the document and
25 I'd like to point out to you something that he

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1 skipped over. If you could look at the second full
2 page of the text, page number 0577, under the heading
3 "NO SCIENTIFIC PROOF."

4 A. Yes.

5 Q. Could you read that first paragraph into the
6 record, please.

7 A. "The case against smoking has been primarily
8 based on statistical studies, not on scientifically
9 established proof of cause. In an unbiased
10 scientific approach, a statistical correlation was
11 regarded as a clue pointing the way for more
12 investigation. It is not accepted as proof for
13 rendering a judgment of cause."

14 Q. Was that your understanding at the time?

15 A. Yes, it was.

16 Q. Now the attorney for the state also showed you a
17 document which was numbered 1051, and I believe you
18 identified that as part of the public-issues
19 statements.

20 A. Yes.

21 Q. And he again directed your attention to selected
22 excerpts from this document. Do you remember that?

23 MR. O'FALLON: Objection.

24 A. That's correct.

25 Q. Did he have you read into the record the entire

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1 document?

2 MR. O'FALLON: Objection.

3 A. I don't recall that he did.

4 Q. Okay. Did he ask you to read it into the
5 record?

6 A. I don't recall that I read it in its entirety.

7 Q. Do you recall during the course of the
8 deposition that the attorney for the state asked you
9 whether you had disclosed to the public, meaning
10 whether RJR had disclosed to the public the fact that
11 people held certain opinions about smoking and cancer
12 and about the association between smoking and cancer
13 and other disease?

14 MR. O'FALLON: Objection, leading,
15 compound.

16 A. I've forgotten the context of the question.

17 Q. Okay. Well, all right. Let me direct your
18 attention to the beginning of that document, the
19 first column, paragraph that starts "So the belief
20 that smoking causes cancer is basically an opinion.
21 It is an opinion held by many reasonable people,
22 based on certain evidence." Do you see that?

23 A. Yes.

24 Q. And you put that into your public-issues
25 statement, did you not?

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1 A. Yes, we did.

2 Q. You put that in there so the public could see
3 that; is that right?

4 A. That's right.

5 Q. So you disclosed to the public the fact that
6 many reasonable people held the belief that there was
7 a link between smoking and cancer, didn't you?

8 A. Yes.

9 Q. Now the state also directed your attention to
10 various documents that had been produced to the state
11 by R.J. Reynolds that predated your time with the
12 company; isn't that correct?

13 A. That's correct.

14 MR. O'FALLON: Objection, leading.

15 Q. And I believe you testified you started in 1978;
16 correct?

17 A. That's correct.

18 Q. And you were shown a fair amount of documents
19 from the '50s and '60s and '70s during the course of
20 the day today?

21 A. Quite a few.

22 Q. Okay. One of the documents that the state
23 showed you was Plaintiffs' Exhibit 1090, which is
24 entitled "SURVEY OF CANCER RESEARCH," and was written
25 in February of 1953 by Dr. Teague. Do you have that

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1 document in front of you?

2 A. Yes, I do.

3 Q. I think you testified you never saw that

4 document before --

5 A. No.

6 Q. -- the deposition?

7 A. Predates by 25 years my joining the company.

8 Q. The state asked you to read various portions of

9 that document, or read various portions of that

10 document to you, and I just want to direct your

11 attention to additional portions of the document.

12 For example, on page 2, the first full page of text

13 of the document, the first line is entitled

14 "OBJECT." Do you see that?

15 A. Yes.

16 Q. Do you remember when the attorney for the state

17 read you a portion of that document?

18 A. Yes.

19 Q. Or portion of that paragraph?

20 Let me read the entire thing into the record.

21 It says, "The object of this report is to give a

22 broad, general survey of cancer research, with

23 emphasis on studies actually or potentially related

24 to carcinogens from tobacco. Pertinent references

25 are cited; where possible these are review articles

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1 with comprehensive coverage and bibliography. No
2 attempt has been made at completeness of coverage of
3 various topics or completeness of citation of
4 original sources." Do you see that?

5 A. Yes.

6 Q. All right. Is it your understanding based on
7 that paragraph that what Dr. Teague is talking about
8 is information that he has gathered from various
9 articles?

10 MR. O'FALLON: Objection.

11 Q. And other sources?

12 MR. O'FALLON: Objection, leading.

13 A. That's -- It says "pertinent references are
14 cited," so it would appear that he was building this
15 based upon information available to him.

16 Q. Okay. And turn, if you would, to the very end
17 of para -- end of the document. Again that was not
18 something the state directed your attention to, but
19 do you see beginning on page 16 of this document that
20 there is a bibliography?

21 A. Yes.

22 Q. And does that bibliography refer to various
23 materials and sources that were used, as far as you
24 understand, by Dr. Teague in this document?

25 A. It looks like it lists some 78 various sources

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1 of input.

2 Q. Right.

3 A. Going back many years.

4 Q. I'm sorry. And do those sources appear to be
5 published materials?

6 A. I would have to assume that, but I don't know.

7 Q. Okay. Would they appear to give a year of
8 publication?

9 MR. O'FALLON: Objection.

10 A. They give a year.

11 Q. Now you were also asked to look at document
12 1050, which is a document authored by Dr. Rodgman
13 back in 1962. It's entitled "THE SMOKING AND HEALTH
14 PROBLEM." Do you see that document?

15 A. Yes.

16 Q. And do you recall that the state asked you
17 several questions about this document, again from
18 selected portions of it?

19 A. Yes.

20 Q. Okay. Mr. Horrigan, can you tell whether or not
21 this is a complete document?

22 MR. O'FALLON: Objection. This is the
23 document as produced to us by R.J. Reynolds Tobacco
24 Company, and it's complete based on the 4 B index
25 R.J. Reynolds has provided.

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1 Q. Would you look at page 6 of the document,
2 please, sir? Does that appear to be the concluding
3 page of the document?

4 A. On closer examination, no, because it seems to
5 end with an incomplete sentence. Item number 4 would
6 suggest that there is another page that follows.

7 Q. Okay. At least one other page; is that right?

8 A. That would suggest that, unless it's a typo.

9 Q. In looking at the document as a whole, does this
10 appear to be a final draft of a document?

11 MR. O'FALLON: Objection.

12 Q. A final version of it?

13 MR. O'FALLON: Objection.

14 A. Well I see a lot of scribbling and lining out
15 and words added which suggests it's a draft, but I
16 don't know.

17 Q. Okay. In any event, you never saw this document
18 before the deposition; is that right?

19 A. Not until this morning.

20 Q. Now Mr. O'Fallon asked you several times when he
21 was showing you these old documents that were written
22 before you were there whether or not you ever
23 incorporated certain excerpts from these documents in
24 your public-issue statements and congressional
25 testimony and other public statements. Do you recall

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1 that line of questioning?

2 MR. O'FALLON: Objection, leading.

3 Q. As a matter of fact, the public-issue campaign
4 that you were asked about earlier today, when did
5 that take place again?

6 A. It was either '83 and '84 or '84 and '85, I
7 can't remember.

8 Q. Okay. And at that time what was your
9 understanding of the public awareness concerning the
10 issues relating to smoking and health?

11 A. Well my recognition of the problem was that it
12 was a growing problem of public opinion,
13 congressional concerns, government pressures, and it
14 was in recognition of that problem that we decided we
15 needed to take a different approach to airing the
16 issues.

17 Q. Okay. And what was your understanding at that
18 time of the public's under -- own understanding of
19 the link or association, if there was one, between
20 smoking and disease?

21 MR. O'FALLON: Objection.

22 A. We felt that the statistics about public opinion
23 was continuing to grow against our industry and that
24 people were continuing to draw conclusions about our
25 product at an increasing rate.

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1 Q. Okay. And did you have a belief of your own,
2 Mr. Horrigan, as to whether or not the public in
3 general was aware of any health risks associated with
4 smoking?

5 A. I think as I have testified at Congress and has
6 been published in any number of publications over
7 many, many years, the level of awareness on the part
8 of the public of the charges against smoking is -- is
9 probably the highest of any consumer product in the
10 history that I've ever known.

11 Q. Okay. Well let's look for a minute at
12 Plaintiffs' Exhibit 4108, which the state showed you,
13 I think more than once, and asked you to read or read
14 to you selected portions --

15 A. Right.

16 Q. -- from that document. Could you remind us what
17 this document is, 4108?

18 A. This is my statement before one of the three
19 congressional committees where I appeared in 1982.

20 Q. Was this in connection with the proposal to have
21 rotated -- rotating warnings on the packages?

22 A. I think that was the key issue at the time.

23 Q. Okay. As a matter of fact, what happened to
24 that legislation? Were rotating warnings placed on
25 the cigarette packs?

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1 A. They were. I've forgotten how long after these
2 hearings, but there was an agreement reached to put
3 rotating warnings in place of the one single warning.

4 Q. Okay. Now in document 4108, which is your
5 statement to the senate committee, do you say
6 anything about the issue of public awareness
7 concerning the health problems that had been
8 associated with smoking?

9 MR. O'FALLON: Objection, leading.

10 A. I believe on page 2 there is one paragraph that
11 says, "By contrast, at least 90 percent of the public
12 is aware of the allegations that smoking is dangerous
13 to health. This level of awareness demonstrates the
14 success of the current Congressionally mandated
15 warning statement, as well as the efforts of public
16 and private organizations."

17 Q. Okay. And so that was your understanding --
18 Well, let me back up.

19 Perhaps to put it in context, why don't you read
20 the paragraph before that.

21 MR. O'FALLON: Objection to the
22 characterization.

23 Q. Read the paragraph that starts "Let me provide
24 some" -- Let's start with the paragraph entitled
25 "Indeed"; okay?

1 A. Earlier in this statement I made the point as
2 follows: "Indeed, the level of awareness about
3 smoking and health far exceeds public awareness of
4 most, if not all, of the major contemporary issues
5 facing this nation." I went on to cite examples by
6 saying, Let me provide some examples: A 1980 Gallup
7 poll revealed less than 25 percent of the public
8 knows what the First Amendment is or what it deals
9 with. Other recent national surveys reveal that
10 nearly 25 percent do not know what happened to Three
11 Mile Island; 36 percent are not aware the United
12 States must import oil to meet its energy needs; 45
13 percent do not know that automobiles are the major
14 source of air pollution; and one-third do not know
15 whether the Federal budget -- budget is balanced, and
16 then I went on to contrast that to the
17 90-percent-awareness level amongst the public on the
18 allegations about smoking and health.

19 Q. All right. And then turning back to the very
20 first page of this exhibit, 4108, you refer in your
21 statement to a 1981 Gallup survey reported by -- in
22 November of 1981 finding that "Ninety percent of the
23 population agrees that cigarette smoking is
24 harmful." Do you see that?

25 A. Yes.

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1 Q. Okay. And again on the top of page 2, you
2 stated that "In his 1979 report, the U.S. Surgeon
3 General said that 'notable changes had taken place in
4 public awareness of claimed smoking hazards and
5 expressed doubt that a higher level of awareness
6 could have any effect on smoking behavior.'"

7 MR. O'FALLON: Objection, leading.

8 Q. Do you see that?

9 A. Yes, that's in my statement to the -- to the
10 Congress.

11 Q. Okay. Was that your belief at the time, sir?

12 MR. O'FALLON: Objection, leading.

13 A. Yes.

14 Q. Also at that point in time, at the time of the
15 public-issue campaign, at the time of your various
16 appearances before Congress, were your cigarettes
17 carrying warning labels?

18 A. Yes.

19 Q. Mandated by Congress?

20 A. Yes, they were.

21 Q. And did they warn the public and smokers in
22 particular about the health hazards relating to
23 smoking?

24 A. We had -- We comply with the government
25 regulations and at one point had one warning label,

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1 one statement which moved on as a result of all this
2 to rotating warnings, yes.

3 Q. Okay.

4 A. Not only in our packs, but all our other
5 advertising.

6 Q. Okay. Let me ask you some questions as a
7 follow-up to the examination relating to nicotine.

8 Mr. Horrigan, did you ever tell anyone, while
9 you were heading the tobacco company, that they
10 should try to manipulate nicotine in any of Reynolds'
11 cigarettes?

12 MR. O'FALLON: Objection, leading.

13 A. I never, never so directed or advised anyone.

14 Q. Did you ever consider making such a direction?

15 MR. O'FALLON: Objection, leading.

16 A. Never considered it.

17 Q. Do you know whether anyone was ever manipulating
18 nicotine while you were there at the company?

19 MR. O'FALLON: Objection, leading.

20 A. I don't recall that we ever referred to the
21 nicotine balance in our cigarettes as manipulation,
22 ever.

23 Q. Based on the documents that you were shown
24 during the deposition today by the state, do you
25 believe that RJR Tobacco ever manipulated nicotine in

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1 cigarettes in the past?

2 MR. O'FALLON: Objection, leading.

3 A. I was not aware of any manipulation of
4 nicotine. I was aware of technical developments that
5 gave other companies a better balance of nicotine in
6 terms of their total delivery of their product or
7 configuration that we were lagging.

8 Q. And have any of the documents that you were
9 shown today indicated to you that in fact the company
10 was manipulating nicotine in any way?

11 MR. O'FALLON: Objection.

12 A. Restate the question, please.

13 Q. Had -- Did any of the documents that you were
14 shown by the state of Minnesota today lead you to
15 believe that the company was ever manipulating
16 nicotine, either during the time you were there or
17 prior to that time?

18 MR. O'FALLON: Objection leading,
19 compound.

20 A. To the extent that I could read them, I never
21 saw anything in those memorandums, be they drafts or
22 final reports, that would suggest an overt attempt to
23 manipulate nicotine. Perhaps in the eyes of the
24 beholder, those who are contrary to our position,
25 they choose to believe that.

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1 Q. Let me ask you now some questions about the
2 subject of underage smoking, which you were asked
3 several questions about.

4 First of all, you were shown again a lot of
5 documents that had been written before you were with
6 the company; is that right?

7 A. Yes.

8 Q. And had you ever seen those before today?

9 A. I don't recall ever having seen them.

10 Q. Do you know if any of those old documents, again
11 I'm talking about the pre-1978 documents that you
12 were shown, the marketing documents, do you know
13 whether the proposals or suggestions or ideas
14 reflected in the documents, to the extent that you
15 were allowed to read them, were ever implemented by
16 the company?

17 MR. O'FALLON: Objection, leading.

18 A. I just recall that we had a lag in the segment
19 of the smoking population as made up by the younger
20 adult smoker and we tried to develop campaigns to
21 more forthrightly or aggressively get ourselves at
22 the level of decision making at the legal age.

23 Q. You are talking about when you were there;
24 right?

25 A. Yes.

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1 Q. And I'm going to ask you some questions in a
2 moment about what was going on when you were there.

3 A. Right.

4 Q. But what I'd like to focus on first is some of
5 these documents that you were shown today that were
6 before your time at the company, --

7 A. Right.

8 Q. -- back in the '70s, before you appeared on the
9 scene, or even earlier.

10 Do you know whether any of the ideas or
11 proposals or suggestions set forth in those old
12 documents; that is, documents written before you were
13 there, do you know whether any of those were actually
14 implemented by the company?

15 MR. O'FALLON: Objection, leading.

16 A. I'm not aware.

17 Q. Do you know whether any of those documents
18 reflected the policy of the company at that time,
19 again, before you were there?

20 MR. O'FALLON: Objection, leading and
21 foundation.

22 A. I'm not aware of any policy about it. I think
23 it's more a question about how information was lifted
24 on population by age brackets and how it was then
25 reported out, but there was no policy to go after

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1 younger people, as I understood it.

2 Q. Okay. Let me show you a couple documents that
3 you were asked about that were written when you were
4 there, for example document 1031, 1038 and document
5 1122. Those are all various marketing reports; is
6 that right?

7 A. Yes.

8 Q. Did any of these ever reach your desk when you
9 were there with the company?

10 A. I can't recall. Obviously I'm not indicated
11 here on the distribution of these memorandums and
12 whether I was at all a part of them, I can't
13 remember.

14 Q. Given your particular roles over time, were you
15 ever aware or were you made aware of major marketing
16 and promotional activities by the company with
17 respect to their cigarettes?

18 MR. O'FALLON: Objection, leading.

19 A. Yes.

20 Q. But none of these documents that I just showed
21 you and were shown to you earlier, that is, 1031,
22 1038 and 1122 reached your desk; is that right?

23 A. No. Final campaigns, executions and so on, I
24 was involved in that process but not into -- not
25 involved in the building process of all the

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1 accumulation of data and so on that went into those
2 final campaigns.

3 Q. Okay. In fact, I think you testified earlier
4 that you had never heard of the term "FUBYAS" the
5 F-U-B-Y-A-S that you were asked about?

6 A. I cannot recall that I ever heard that term.

7 Q. Was that a new term that you just heard today
8 for the first time?

9 A. I believe so. Young adult smoker, YAS, I
10 understood that very clearly. FUBYAS, never heard of
11 it but --

12 Q. Okay. From your perspective, Mr. Horrigan,
13 while you were there in your various positions with
14 R.J. Reynolds Tobacco, did you ever approve any
15 marketing or promotional campaigns that were directed
16 to underage smokers?

17 A. No.

18 Q. What were your own feelings about underage
19 smokers and whether Reynolds should direct any
20 advertising or promotional campaigns to that market?

21 A. My feelings were very strong on that matter. I
22 had spent five years in the spirits industry before
23 coming to tobacco. That industry has a very high
24 awareness level of sensitivity to the marketing of
25 their products to people below the legal age, and I

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1 carried with -- carried that same experience to
2 tobacco and felt very strongly and would never have
3 endorsed any programs aimed at the prelegal-age
4 smoker.

5 Q. And do you feel that during the time that you
6 were there any such programs did manage to be
7 approved; that is, programs that were aimed at the
8 underage smokers?

9 MR. O'FALLON: Objection.

10 A. I don't recall that any were ever executed
11 against underage smokers.

12 Q. In fact did you make as part of your
13 public-issues campaign an effort to have statements
14 released relating to the fact that Reynolds did not
15 support and did not endorse underage smoking?

16 MR. O'FALLON: Objection, leading.

17 A. I think one of our ads, ads or statements in the
18 public-issues campaign addressed that very issue.

19 Q. Okay. Could you describe --

20 A. I can't recall it, but something about "should
21 kids smoke?" I've forgotten the headline. It was an
22 attention-getting headline but it made it very clear
23 that although we are in the marketing business of
24 cigarettes, we do not want people to smoke our
25 products until they are old enough to make a

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1 decision.

2 Q. Okay. Now I think you stated earlier in the day
3 that the Joe Camel campaign was -- reflected part of
4 your own input; is that right?

5 MR. O'FALLON: Objection, leading.

6 A. Yes.

7 Q. And could you describe that just in a general
8 way, how you figured in the Joe Camel campaign?

9 A. In this regard: The -- Reynolds Tobacco U.S.A.
10 was consistently losing market share, as a result
11 primarily of Marlboro's success. Our key brands,
12 Winston and Camel, were unable to answer that problem
13 in terms of our market performance, and because I had
14 the worldwide responsibility for cigarettes, I was
15 quite familiar with the campaign that had worked very
16 successfully in France called the "Funny Camel," they
17 called it, and I asked our marketing people to take a
18 very serious look at the Funny Camel to see if that
19 would not get us positioned more competitively in the
20 U.S. market.

21 Q. Mr. O'Fallon asked you a number of questions
22 relating to whether or not Joe Camel was used to try
23 to attract young adult smokers. Do you recall those
24 questions?

25 A. More or less.

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1 Q. Okay. Do you -- Was the idea behind the Joe
2 Camel campaign exclusively to try to attract young
3 adult smokers?

4 MR. O'FALLON: Objection, leading.

5 A. It was not, and some of these questions get very
6 limiting in terms of your ability to answer it, but
7 the word I used to describe the Funny Camel campaign
8 was that it was an effort on our part to contemporize
9 the brand. The profile of the Camel smoker was
10 indeed a very old profile, very high up in the age
11 scale, and we needed to bring Camel into the
12 attention level of people from 18 or 20 on up, even
13 as high as in their 40s, but we needed to have a more
14 contemporary appeal for Camel, thus the Funny Camel.

15 Q. All right. Was it intended to be broad based,
16 the appeal to the campaign?

17 A. It was intended to appeal to the younger segment
18 of smokers.

19 Q. And was it also intended to appeal -- to have a
20 broader base appeal? And let me ask you, do you have
21 Exhibit 1040 in front of you, by any chance?

22 A. I might have. Here it is, yes. Yes.

23 Q. 1040, okay. Mr. O'Fallon asked you to take a
24 look at the paragraph entitled "TARGET AUDIENCE" in
25 Exhibit 1040. Do you recall that? He read you a

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1 portion of that paragraph under that heading.

2 A. Right.

3 Q. Do you remember that?

4 MR. O'FALLON: Objection, leading.

5 A. Yes.

6 Q. But he didn't read this last sentence. Let me
7 read it into the record. "However, recognizing the
8 volume potential associated with advertising which is
9 broad based in appeal, the creative exploratory will
10 emphasize approaches which employ universal cues and
11 symbols having motivational value outside the prime
12 prospect group as well."

13 That sounds like a lot of advertising-speak to
14 me, Mr. Horrigan. Can you translate that for us?

15 MR. O'FALLON: Objection, characterization.

16 A. I think that -- that is a more so-called
17 marketing-oriented way of expressing what I just said
18 a few moments ago, and that was, we need to
19 contemporize our brand because the profile of the
20 Camel smoker indeed moved way up the scale in terms
21 of age, so beyond 18 to 25 year olds, we needed 30,
22 35-year-old people, 40 year old, whatever, in our
23 audience.

24 Q. Let me ask you too, the state asked you some
25 questions about selling your products in convenience

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1 stores, and do you recall that line of questioning?

2 A. I certainly do.

3 Q. Did R.J. Reynolds, to your knowledge, ever make
4 the decision to try to sell more of its products in
5 convenience stores because they were trying to
6 attract underage smokers?

7 MR. O'FALLON: Objection, leading.

8 A. Not in the least.

9 Q. Did that ever enter your own thinking when you
10 all were making those marketing plans?

11 A. It wasn't even a thought.

12 MR. O'FALLON: Objection, leading.

13 A. There were shifting trends in terms of pack and
14 carton purchases occurring within the U.S. market and
15 the emphasis was going away from supermarkets and to
16 convenience stores where single-pack sales were
17 critical. That was the whole reason for our
18 convenience store programs.

19 Q. All right. And did you --

20 As a matter of fact, R.J. Reynolds doesn't sell
21 its product to the public, does it, it's grocery
22 store owners, convenience store owners, et cetera.

23 MR. O'FALLON: Objection, leading.

24 A. To distributors and retailers, yes.

25 (Interruption by the reporter.)

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1 A. We sell to -- sold to tobacco wholesalers and
2 key grocery chain warehouses, et cetera.

3 Q. All right.

4 A. Not to consumers.

5 Q. All right. And did -- did the company ever try
6 to encourage convenience store owners to sell to
7 underage smokers?

8 MR. O'FALLON: Objection, leading.

9 A. No. In fact to the contrary, I thought we had
10 provided some information or material at the point of
11 sale to reinforce our position and aid the retailer
12 in -- in discerning the age of people to smoke, but I
13 don't remember that very specifically.

14 Q. But in any event, the -- was the effort to sell
15 in convenience stores a response to just the changing
16 market trends?

17 A. The effort to sell in convenience stores was to
18 get at the market in terms of where the real
19 consumers were versus where they used to be.

20 Q. Okay.

21 MS. McDOLE: Thank you very much, Mr.
22 Horrigan.

23 THE WITNESS: Thank you.

24 MR. O'FALLON: I've just got a few.

25 (Discussion off the record.)

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1 ADVERSE EXAMINATION

2 BY MR. O'FALLON:

3 Q. Mr. Horrigan, you're aware that Ms. McDole
4 represents R.J. Reynolds Tobacco Company; correct?

5 A. That's correct.

6 Q. Are you aware that the state of Minnesota was
7 required five business days prior to this deposition
8 to inform Ms. McDole and her client of what documents
9 we intended to use here today with you?

10 A. I'm not aware of that.

11 Q. Did Ms. McDole ever offer to share with you the
12 documents I predesignated to use with you today at
13 this deposition?

14 A. I think I mentioned in my initial questioning
15 with you that I did not see any documents in my
16 discussions prior to coming here today.

17 Q. No. My question is: Did she ever offer to
18 share with you the documents that I had to
19 predesignate prior to this deposition, with you?

20 A. Absolutely not.

21 Q. She never indicated to you that she knew what I
22 would be asking, what documents I would be using
23 today or had the ability to use today, and she never
24 asked you whether you wanted to look at those prior
25 to the deposition; correct?

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1 A. I think in answer to the last part of your
2 question, I did not see any documents. I believe had
3 I asked to see them I would have been denied the
4 ability to see them, and other than that I think our
5 preparation for this meeting was just trying to
6 anticipate where this questioning would go and that
7 was it. Other than that, I consider it privileged.

8 Q. All of these documents that I've shown you here
9 today, including documents that were in R.J.
10 Reynolds' files prior to the time you joined, really
11 form part of R.J. Reynolds' corporate knowledge;
12 correct?

13 MS. McDOLLE: Objection to the form.

14 MR. DAVIS: Objection.

15 A. I think they provide part of R.J. Reynolds'
16 corporate filing. I don't know what they do about
17 corporate knowledge or policy.

18 Q. And presumably during any time of your career
19 had you wanted to get more specific information about
20 any of these topics, you could have requested and
21 would have been provided these documents; correct?

22 MR. DAVIS: Objection.

23 A. I think if I had wanted to know more about any
24 of these subjects there would have been no
25 information denied me, if that's what you're saying.

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1 Q. You would also agree, wouldn't you, that the
2 jury should be free to judge both your testimony and
3 R.J. Reynolds' knowledge based on the totality of
4 these documents; correct?

5 MR. DAVIS: Objection.

6 A. The jury, if they are able to go through these
7 voluminous in-house documents that represent the
8 opinions, the viewpoints and try to make some sense
9 out of all of it to form an opinion, that's -- that's
10 up to a jury. I can't answer for a jury.

11 Q. And you, of course, would have no objection to
12 the state of Minnesota making available to the jury
13 all of these documents I've went with you -- I've
14 went through with you today in their entirety so they
15 can look at those documents in their entirety;
16 correct?

17 A. If you choose to offer those to the jury to look
18 at, I would have, obviously, no objection. I would
19 hope that, as opposed to me, that you would not
20 withhold part of it so they can only see one
21 memorandum and no attachments.

22 Q. Sir, the one memorandum I provided you without
23 the attachment was provided to you in exactly the way
24 it was produced to me by your former employer, R.J.
25 Reynolds Tobacco Company. Do you understand that?

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1 A. No, I didn't understand that, but that's fine.

2 Q. Okay.

3 A. But you asked me questions that, in order to
4 answer them more completely, I would have had to see
5 the supporting document.

6 Q. And you would agree with me that R.J. Reynolds,
7 who has had the opportunity to ask you questions
8 here, certainly could have found the attachment to
9 that document because, in point of fact, I had to
10 tell R.J. Reynolds before I came in to talk with you
11 here today, what documents I would be using;
12 correct?

13 MR. DAVIS: Objection.

14 A. I told you I did not see any documents. I had
15 no idea of the specific documents that you would
16 cover. I've been through these depositions many
17 times before.

18 Q. And of course, Ms. McDole in her questioning
19 didn't offer to provide you the attachment to that
20 1980 document, did she?

21 A. No. I was just answering your question in the
22 context you asked it, not in the context of anything
23 that was asked me by Ms. McDole.

24 Q. What I'm saying is: Ms. McDole, in doing her
25 questioning, didn't provide you a copy of the

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1 attachment to that 1980 document; correct?

2 A. Her line of questioning did not touch on that
3 document.

4 Q. I believe you testified that you did in fact
5 testify against the whole notion of rotating
6 warnings; correct?

7 A. That's correct.

8 Q. But at the same time you testified that
9 everybody knew or that a lot of people knew about
10 these risks of tobacco; right?

11 A. That's right.

12 Q. Isn't it somewhat inconsistent to say on one
13 hand everybody knows, but on the other hand say we
14 don't want any rotating warnings?

15 MR. DAVIS: Objection.

16 Go ahead.

17 A. No. But you're asking a question similar to
18 Congressman Waxman. There is a statement, if it
19 ain't broke, don't fix it. I would've loved to have
20 an advertising campaign as successful as the
21 single-warning notice that developed 95 percent
22 awareness versus the dilution of that with the
23 rotating warnings on packs by period, and as far as I
24 was concerned it was a total dilution of the warning
25 aspects of cigarettes. That was my opinion and I --

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1 I base that on too many years of experience in
2 marketing.

3 Q. So it's your testimony that the rotating
4 warnings diluted the effect of the warnings?

5 A. That's my opinion.

6 Q. Is that why the industry eventually agreed to
7 the rotating warnings?

8 A. The industry finally agreed because the industry
9 has had a record of complying with, cooperating with
10 and trying to be responsive to changing congressional
11 and marketplace demands.

12 Q. Isn't it true, sir, but for the government
13 requirement, if you had your way there would be no
14 warning on a pack of cigarettes at all?

15 MR. DAVIS: Objection.

16 A. I can't answer that. I can only tell you the
17 industry acted responsively over many years. I can
18 go back again to the, again, spirits industry, who on
19 their own decided not to be on television, and I can
20 only say that this industry has acted responsibly,
21 and had there been a need to do something on its own
22 initiative, I would like to think, going back, it
23 would have happened without having had a
24 congressional mandate, but that's a very academic
25 question.

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1 Q. But the fact of the matter is, the cigarette
2 industry never put a warning on a pack of cigarettes
3 until the government required them to do so; isn't
4 that true, sir?

5 MR. DAVIS: Objection.

6 A. You had a growing controversy here, the
7 so-called concerns about smoking go back in history
8 so that as it peaked or as it increased in
9 sensitivity then the companies had to respond to the
10 change in government pressure. It's that simple.

11 MR. O'FALLON: Move to strike as
12 nonresponsive.

13 MS. McDOLE: Objection to the motion.

14 Q. Here's my question, here's my question: The
15 fact of the matter is, the cigarette industry never
16 put a warning on a pack of cigarettes in the United
17 States until the government required them to do so.
18 Isn't that true, sir?

19 A. It is true, and you are an expert on hindsight
20 judgment, which I challenge.

21 Q. Ms. McDole asked you about documents that
22 indicated that R.J. Reynolds was directly focusing
23 their advertising and their marketing plans at the
24 underage market. Do you recall her questions on
25 that?

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1 A. Somewhat.

2 Q. You said you didn't know whether they were
3 implemented or not implemented; correct?

4 MS. McDOLE: Objection,
5 mischaracterization.

6 A. I said I don't recall whether there was any
7 advertising or promotion that I can remember directly
8 aimed at or launched at the underage smoker.

9 Q. But you can't testify as you are sitting here
10 today that the programs outlined in the R.J. Reynolds
11 documents that I showed you were not carried out, can
12 you, sir?

13 MS. McDOLE: Objection.

14 A. The --

15 MR. DAVIS: Objection.

16 A. But I would also say to you that the documents I
17 saw did not have programs, they had tomes written
18 about objectives and ideas, but "programs" in my
19 language, is distinctly different from what I read
20 here today in these reams of documents that you've
21 shown to me.

22 Q. So your answer is no, you can't testify as you
23 sit here today that the programs outlined in the R.J.
24 Reynolds documents that I showed you were not carried
25 out.

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1 MR. DAVIS: Objection.

2 MS. McDOLE: Objection.

3 A. I'm saying I'm not aware that any were carried
4 out. There is a difference.

5 Q. Nor are you aware that they were not carried
6 out; isn't that true, sir?

7 MS. McDOLE: Objection to the form of the
8 question.

9 A. I'm sorry, this line of questioning continues to
10 be a -- designed to produce a result from me that you
11 are not going to get.

12 Q. So you're not going to answer that question for
13 the benefit of the jury?

14 MS. McDOLE: Objection. He answered it
15 already.

16 MR. DAVIS: Objection.

17 A. I'm not going to answer it in the context which
18 you asked it repeatedly.

19 Q. Ms. McDole asked you a little bit about youth,
20 and it's my understanding that it was your testimony
21 that R.J. Reynolds took out some advertisements
22 encouraging youth not to smoke; correct?

23 MS. McDOLE: Objection.

24 A. As I recall, it was not advertising. It was our
25 public-issues campaign. They were not ads, they were

1 issue statements. One of them was devoted to our
2 position about youth smoking. I don't remember the
3 copy.

4 Q. Would it surprise you, sir, to know that during
5 the entire 1983 to '94 period R.J. Reynolds spent
6 approximately \$19 million on youth prevention?

7 A. I've forgotten what the dollars were.

8 Q. Would it surprise you that during that same
9 period of time they spent well over \$8 billion
10 advertising their product?

11 A. Would it surprise you the Cancer Institute spent
12 more money on advertising than they ever did on
13 research?

14 MR. O'FALLON: I'm going to move to strike
15 that as nonresponsive.

16 Q. Would you please answer my question, sir?

17 MS. McDOLLE: Objection to the motion.

18 MR. DAVIS: Objection.

19 A. I'm answering your question by saying that the
20 company has a legitimate product, they still are,
21 they had a right to advertise their product and they
22 still earmarked dollars for other efforts, to be
23 responsive.

24 Q. So you would agree that R.J. Reynolds spent a
25 scintilla of the amount of money they spent on

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1 advertising and selling their products on preventing
2 youth from smoking their products; correct?

3 MS. McDOLE: Objection to the form --

4 MR. DAVIS: Objection.

5 MS. McDOLE: -- the form of the question.

6 A. You are distorting the budgetary commitments
7 made by Reynolds, and the more people like you do to
8 suppress children smoking the more you are going to
9 have them smoke.

10 Q. Is it your testimony that suppression or
11 suggesting to children that they not smoke will
12 actually encourage them to smoke?

13 A. I'm telling you that your efforts are absolutely
14 prohibitionist in mood and you will no more change
15 the habits of young people smoking than I will. If
16 you're a parent, you will understand it.

17 MR. O'FALLON: Move to strike as
18 nonresponsive.

19 THE WITNESS: I answered your question.

20 MS. McDOLE: Objection to the motion.

21 Q. Is it your testimony, sir, that actually telling
22 peo -- telling children not to smoke will encourage
23 them to smoke?

24 MS. McDOLE: Objection, asked and
25 answered.

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1 A. In my opinion, there is a forbidden-fruit
2 mentality that can occur with this product if you're
3 not careful.

4 Q. So when you took out your advertisements or
5 statements in 1983 and '84 telling kids not to smoke,
6 were you actually intending that they do the opposite
7 and smoke?

8 MR. DAVIS: Objection.

9 A. No, you are -- That's a terribly, terribly
10 devious question, if you don't mind my saying so.

11 Q. Well you'll say whatever you want whether I mind
12 it or not.

13 A. Fine. We are trying -- We took a high-road
14 approach, we tried to make our position known about
15 this issue, and that's 10 or 11 years ago, or 13
16 years ago, and I don't remember.

17 MR. O'FALLON: I have no further
18 questions.

19 MS. McDOLE: I have no further questions.

20 (Reading and signing of the original
21 transcript waived.)

22 (Deposition concluded at approximately
23 3:10 o'clock p.m.)

24

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1 C E R T I F I C A T E

2 I, David A. Campeau, hereby certify that I
3 am qualified as a verbatim shorthand reporter; that I
4 took in stenographic shorthand the foregoing
5 deposition of EDWARD A. HERRIGAN, JR. at the time and
6 place aforesaid; that the foregoing transcript
7 consisting of pages 1-267 is a true and correct, full
8 and complete transcription of said shorthand notes,
9 to the best of my ability; that the noticing party
10 has been charged for the original transcript, and
11 that ordering parties have been charged the same rate
12 for such copies of the transcript.

13 Dated at Lino Lakes, Minnesota, this 26th
14 day of September, 1997.

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